88-894

Supreme Court, U.S.
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No.88-_____

IN THE
SUPREME COURT OF
THE UNITED STATES
OCTOBER TERM, 1987

John J., Judith A. and John E. Reardon,

Petitioners,

--against--

Judge Miller, et al

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

John E. Reardon and
For John J. and
Judith A. Reardon
Oakridge Terrace-B33
Runnemede, N.J. 08078

Dated: July 26,1988

Petitioners

287 PP

WRIT QUESTIONS

1) Can a Judge who does not act in a time and manner prescribed by the legislature--i.e. in accordance with the Constituted and Legislated will of the people--act For the state for immunity purposes? and if not, does the Federal court have jurisdiction over such matters under 42 U.S.C. 1983? and Does the Federal courts have jur-isdiction over 42 U.S.C. 1983 claims even if the judge is immune when it involves private persons acting with the judge?

2) Where does a parent who is denied the protections of EAHCA, and who is barred from proceeding in the state by state statute, and who was denied these safe-guards by a conspiracy, turn to have his/her statuatory rights protected? and Can

such a person then sue directly under 42 U.S.C. 1983 for deprivations of rights and /or intentional infliction of emotional distress?

3) Do the federal courts have jurisdiction directly under 42 U.S.C. 1983 and Art. VI Sec. 2 to settle controvercies between state and federal statutes so that the intent of the federal law can be carried out and enforced? and If there is such a conflict, is not the federal courts then supposed to set aside such state statutes?

4) Do the federal courts have direct jurisdiction under 42 U.S.C. 1983 and 28 U.S.C. 1343 and 28 U.S.C. 1331 for the following areas of law:

A) Intentional inflcition of emotional distress.

B) Setting aside of orders incurred by denial of due process. i.e. Ex Parte Orders without notice.

C) Setting aside of orders for which the appearance indicates that the orders were rubber stamped by someone else.(i.e. Fraud.)

D) Deprivation of all the aspects of the parent child relationship without notice and based upon fraud.(i.e. denial of 1st amendment rights of association, right to the love, affection and companionship of ones children, parental autonomy in decision making, right to the care,custody and management of ones children and to the chil -dren to the custody of the parents, To the right of pursuit of happiness, equal right to have the mother pay support of the minor children and to

not have a responsibility to support if there is no rights or benefits obtainable from the former.

Parties to Suit

Case 86-408

Plaintiffs/Petitioners: John J., Judith A. and John E. Reardon.

Defendants/Respondents: Marshall Gordon, Mr. Cochraine, Mr. McDonnel, Kathy Schilling, Mr. Lombard, Miss Dayton, Virginia Reardon, Collingswood Brd. of Ed., and Collingswood Child Study Team.

Case 87-2823

Plaintiffs/Petitioners: John J., Judith A. and John E. Reardon.

Defendants/Respondents: Judge Miller, Theodore Costa, Marshall Gordon, Dr. Goldstein, Virginia Reardon and Camden Co. Court system.

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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1987

Case No._____

John J. Reardon, et al, Petitioners

v

Judge Miller, et al, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF NEW JERSEY.

John J. Reardon, Judith A. Reardon and John E. Reardon, petition this court for a writ of certiorari to review the judgement of the U.S. Court of appeals for the third circuit which affirmed the district court of New Jersey for the Eastern

District.

OPINIONS BELOW

The opinion of the district court is located at pages 1-36 of the appendix the the opinion of the court of appeals is found at pages 37-39 of the appendix.

JURISDICTION

The judgement of the court of appeals was entered on May 13, 1988. Therefore,The jurisdiction of this court comes by way of 28 U.S.C. 1254 (1).

CONSTITUTIONAL AND STATUATORY PROVISIONS INVOLVED.

1) Art. III, Sec. 1 and Sec. 2.

2) Art. IV, Sec. 1, Sec. 2 and Sec. 4.

3) Art. VI, paragraphs 2 and 3.

4) U.S. Constitutional Amendment IX.

5) U.S. Constitutional Amendment X.

6) U.S. Constitutional Amendment XIV.

7) 28 U.S.C. Sec. 1331 (a).

8) 28 U.S.C. Sec. 1343 (3) and (4).

9) 42 U.S.C. Sec. 1983.

10) 42 U.S.C. Sec. 1985 (2) and (3).

11) 34 C.F.R. 300.10,et seq

12) N.J.A.C. 1:6A-1.1.

13) N.J.A.C. 6:28-1.1, et seq.

14) N.J.S.A. 52:14F-1

15) N.J.A.C. 6:24-1

16) N.J.S.A. 18A:46-1.

17) N.J.S.A. 2C:25-12, -13 & -14

18) 28 U.S.C. 1738

19) 20 U.S.C. Sec.s 1401, et seq

20) The Declaration of Independance.

21) PL 94-142 and 121 Cong. Rec. 37410-37417.

(appendix pages 62-124)

STATEMENT OF THE CASES

When Congress implimented 42 U.S.C. 1983 it did so with the thought of creating an independant means for individuals to protect and assert their rights under the U. S. Constitution. Since that day 42 U.S.C. 1983 and 28 U.S.C. 1331 & 1343 has recognized that the federal courts shall have jurisdiction over all matters arising and growing out of the U.S. Constitution. Such cases involve the protection of both Statu -atory and Constitutional rights afforded the people.(Mitchum v Foster.)

A) Case 86-408:

When congress implimented 20 U.S.C. 1401, et seq, it did so with the thought that children would be protected from abuses

that had occurred in the past and had been attested to before the congress in its investigation of these matters.(see app. pgs. 100-124.) Thus, congress implimented these laws with the intent of ensuring that parents and their children's rights would be protected by building specific procedural safeguards and guarentees into the system. The actual act provides that children and their parents were to be given prior notice of any intent to place in special education, that they would be permitted to participate in the evaluation procedure,that they would be permitted to participate in the develope -ment of the IEP, and that if any conflicts or potential problems arose, that they be given the right to request a due process hearing to settle these disputes. Their purpose for these procedures was to protect the children from misclassification and to

ensure the equal protections of the law, and to ensure that the child's placement provid -ed the most appropriate educational sett- ing.(see 121 Cong. Rec. 37411-37417 and PL94 -142 @pages 1461,1465,1470,1472, 1500,1501- 1503,1434,1436 & 1449 at pgs. 100-124 of the appendix.)

In January 1986, the petitioners filed case 86-408 in the district court of N.J. The petitioner did sue the respondents named in the caption with having denied the petitioners their rights under 20 U.S.C.1401 ,et seq. He charged that such denials were encountered by concerted efforts on the part of the reapondents McDonnel, Cochraine, Lom -bard, Schilling, Gordon, Dayton, and Rear- don. He charged the respondents with having violated all aspects of the EAHCA process in that the petitioner--being a parent by a court order and the federal EAHCA statutes

as well as by way of N.J.A.C. 6:28-2.9--was never given notice of the intended action of evaluation and placement,appendix pg. 40-42 , without providing the petitioners their rights to participate in the evaluation process, without having provided the petitioner his right to help develope the child's IEP and as a result of these, denial of his due process rights to the administrative pro -cess by way of N.J.A.C. 6:28-2.7 which pro -vides that the due process hearing is available to only the parent given notice of the intended action or inaction. The peti -tioner charged he was not given the requir -ed notice under the federal statutes and without this notice required under law, could not proceed in the state adminstrative process by prohibitive state statutes. He further charged that these EAHCA rights could not be enforced in the state as N.J.A.

C. 1:6A-1.1 says that state laws may not be relaxed except where expressly authorized and no such provision existed for this section of the laws.Thus, with no place to turn , case 86-408 was instituted for the protec -tion of rights, to recover for the denial of rights and for the intentional infliction of emotional distress for both his children and himself. The petitioners further charg-ed that the state process was futile both as a matter of practicality--i.e. the child was allready in special education classes for three months before this discovery by the petitioner--and was futile as a matter of legality due to the fact the automatic stay provision could not be used here and be -cause N.J.A.C. 6:28-2.7 did not permitt the petitioner from proceeding in the state. The petitioner based the charge of conspiracy on the fact that the principal

Mr. McDonnel was informed of the petition -er's rights as a parent by way of the state court order in March 1984, an exchange of letters in which he admitted a responsibility to the petitioner, a request by the petitioner for school records and the respondents subsequent denial and then his voluntary release of the same material to the respondent Mrs. Reardon when they requested to have the child evaluated, their sudden refusal and about face with regard to the petitioner's rights without informing him of anything and the respondents continued conduct to keep the petitioner in the dark as to what happened and what was going on.(see appendix pages 40-44) The petitioner based the charge of intentional infliction of emotional distress based on punish assignments given the child for the very behavior which landed him in ape-

cial education, the trauma the child faced from the special education placement which could have been totally avoided by a simple change of custody--for which the school placement information would have provided this and prevented the need to evaluate the child, classify him and eventually place him in such classes and for which a sister agen -cy proved this when they rejected the same reports that collingswood adopted two years later. The distress was also exhibited by the continual behavior problems exhibited by the child in such classes, and his near ex- pulsion from school in October of 1986. As to the petitioner's distress, he suffered from seeing his child suffering all of this trauma and by being denied a more meaning- full and extensive relationship that the change of custody could have provided when it was financially, physically and emotion-

ally within his means.(apndx. @ 140-206.)

In June 1986 the respondents schilling, Dayton and Lombard did file a motion to dissmiss for lack of jurisdiction for failure to exhaust administrative remedies or for failure to state a claim upon which relief could be granted in the alternative. During the period of time between June 1986 and December 1987 the petitioner did try to file papers for discovery, to get movement in the case from the court, and tried to take an appeal to mandate some movement in this matter to the court of appeals and to this court. All were to no avail, and when when the statutes of limitations ran out, apparently, the court did finally answer the motion to dissmiss and dissmissed for want of jurisdiction.

The petitioner challenged the judge's decision based on conflict of federal and

state laws, and what torts the courts in fact had jurisidction over, wether due process was denied, and wether justice was denied by the needless and lengthy delays in the case. On May 13, 1988, the third circuit court of appeals affirmed the decision of Judge Rodrigues.

B) Case 87-2823:

On July 2, 1987, the respondent Mrs. Reardon did take an Ex Parte order, wihtout prior notice of any kind, and had the petitioner restrained from not only excercising his parental rights, but from coming into contact with the respondent Mrs. Reardon and the children no matter where they may be. Said motion was based on the threat to do domestic violence on a letter that was mailed to over 20 different people.

Since the matter came under the New Jersey statutes for domestic violence and said statutes did limit the extent of the restraining power of the court and did prescribe that such mattars must be returned within 10 days and said matter was not to be returned till 12 days later, the petitioner did file case 87-2823 in federal court for obstruction of justice, kidnapping, denial of the love, affection and companionship of one's children, deprivation of right to litigate an issue--i.e. the petitioner's emotional/mental state--in a prior forum joined by the petitioner and respondent Mrs. Reardon, right of free mobility, denial of the equal protections of the laws, and denial of due process of law. The petitioner did seek to amend to include intentional infliction of emotional distress and charged conspiracy on the part

of the respondents Gordon, Miller, Costa Reardon and Goldstein.(apndx.@ 40-44, 86-89 , 137 & 191-206.)

During the appeal of this case, the petitioner did discover that Mrs. Reardon admitted she was not sure of the charges, and that according to Judge Miller's secretary, the judge heard no matters on July 2, 1987 and there is no record of any orders anywhere for the July 2, or Aug. 17, 1987 orders. The orders do not bear any of the required proofs in accordance with 28 U. S.C. 1738.(appendix @ 89.)

The petitioner based the charge of conspiracy on the fact that the respondents Reardon, and Costa were seen coming from the judge's chambers area--along with Mrs. Rear -don's brother-in-law--the fact that there were 4 armed guards in the court room who were instructed to "move-in" on the petition

-er at his slightest of moves ,(see appendix pgs.45-49), that the court did force the petitioner, by these threats and intimidation, to testify against himself, did deny the petitioner of a record for appeals purposes on this issue of conflicting jurisdiction, and the fact that the court legally had no matter before it to decide since the state statutes did require the matter to be returned within ten days and it was not so done.

The petitioner challenged the state court's jurisdiction to pass on an issue allready pending in the federal court, and he further alleged the court to lack jurisdiction over the matter since it was not returned in the manner and time prescribed by the legislature.

The respondent Gordon's counsel did file a motion to consolidate these two cases

on the grounds of similar issues, the court granted and dismissed for want of jurisdiction. While the court addressed counts 1 ,2 & 5, it remained mute on counts 3,4 & 6 as to any specific grounds for its dismiss -al of the entire case.(appendix @ 30 & 31.)

This case was appealed with case 86 -408 on the same grounds enumerated above, and with the same results as above.

REASONS FOR GRANTING THE PETITION:

The decisions of the lower court and its reliance on this court's decision of Smith v Robinson is totally miss-placed and erroneous. In relying on this case, they have ignored the following aspects of the laws:

1) Availability of the process.(Supra @3470.)

2) Futility of the process.(Id. @3469 -3471, ft. nt. 17, Sen. Williams, 121 Cong.

Rec. 37416--the originator of the bill.)

3) Conspiracy to deny and prevent these rights and access to this process.and

4) Torts which are not related direct -ly to the EAHCA process but do stem from the actions involving that process.(Addickes v Kress & Co., 398 U.S. 144.)

Former Mr. Justice Story stated--vol. 3, pages 600 & 601 of his Constitutional Commentaries--that courts are required, when making a decision, to consider all aspects of the laws by way of Art. VI. Here, the low -er court has failed to do this. The Smith case has correctly stated that when the administrative process is available, it was Congress' intent that it should not be circumvented or permitted to be circumvented by a due process or equal protections claim. However, the court has ignored the signifi-

cant factual differences between the Smith case and this case. These differences are:

1) The Smith's were considered parents, and the petitioner was not. (see appen -dix pages 2,40,50 & 53, adopted by Judge Brotman by argument of the respondents.)

2) The Law requires that written prior notice must be given to initiate the pro -cess, the Smith's were given this process and the petitioner has still not received such written notice.(34 C.F.R. 300.504 & .505 i.e. notice of the final decision & the basis for it.)

3) Notice is required in order for the forum to obtain jurisdiction over the subject and person.(Ins.Corp. of Ireland v Compagnie Des Bauxite, 104 S.Ct. 2099,2104, N.J.A.C. 6:24-1.1 & N.J.S.A. 52:14F-1.)

4) The state does not nor never had, jurisdiction over this person and subject,

under the circumstances and the process is not and never was available to this petition -er due to these defects.

5) The Smith's were obviously given opportunity to participate at all levels as the law requires and the petitioner was not. (34 C.F.R.300.345,apndx.040,54,60,&125-136.)

6) The Smith's were given opportunity to a due process hearing prior to the place -ment of the child and the petitioner was not.(apndx. 0 40)

7) The Smith's were given opportunity to utilize the auto-matic stay provision of the statutes and the petioners were not.(34 C.F.R. 300.513)

8) The Smith's either gave their con -sent or waived objection to it, and the petitioner never gave his consent and the school never asked it. (34 C.F.R. 300.500 &

300.504, apndx. @ 40-44, & 53-55.)

9) The Smith's had opportunity to a Due Process hearing and the petitioners did not and in fact N.J.A.C. 6:28-2.7 defines who shall be given opportunity to the due process hearing and the petitioner has no such right.

10) The school was required to obtain this petitioner's consent, as admitted in lettered correspondence by the respondent McDonnel, never obtained it and never requested the hearing above, and classified, and placed the petitioner John J. Reardon anyway.(apndx. @ 43.)

11) The Smith's child was not traumatized and victimized by the school person-el in violation of state code.(N.J.A.C. 6:28-2.8(a)-1. i.e. the child J.J. Reardon was given punish assignments for the very behav-ior which landed him in special educa-

tion,apndx. @ 40-44,54,60 & 170-190.)

12) The state officials did not act to cover up and hide what they were doing from the Smith's as they have here.

13) The state officials in Smith never claimed to owe a responsibility to the Smith's and then refused to carry forth with that responsibility as they did here.

14) The Smith's were kept informed at all stages and not left in the dark or had all information denied them.

All of these facts are significant differences between the Smith case and this case and go to question the availability of the process. If the petitioner is not, or at least was not considered a parent, is this not a significant FACTUAL DISPUTE which must be resolved by a Jury? How can an administrative agency decide such a legal ques-

tion of fact? If the court does not have JUR -ISDICTION to hear such conflicts,who does? Where does a person go to obtain such answers if not to a court of law?

Even if the petitioner is considered a parent, where does he go to ask why the state respondents refused to knowingly fullfill its obligation to these petitioners and to the law? The office of Personnel management--charged with promulgating regulations for the federal laws--stated that the due process hearing is for the purpose of addressing the child's placement/non-placement, the provisions for meeting the child's needs, or intent to intiate the EAHCA process.(34 C.F.R. 300.504.) But is clearly si -lent as to who will determine if a person is a parent with a right to proceed, or how a person who is not considered or treated as a parent is to proceed or where, or how to

address the denial of these rights once the state agents have not granted them or have acted in concert to prevent them and finally , it remains silent as to how the agency can obtain jurisdiction over the subject and person when no notice was given. How can a forum proceed, when it didn't comply with the legal and constitutional requirements of due process? How can a person be said to have access to a system that has done nothing to bring a person under its Jurisdiction? (Ins. Corp. of Ireland v Compagnie Des Bauxite, Haagans v Lavine,and Owens v City of Independance.) Where is the process avail -able to these petitioners? How can they proceed in a state process when the forum/ state has not yet brought the petitioners under their jurisdiction? How can a person who was not a "Parent given written notice of the proposed or denied action..." proceed

in the state administrative process? To allow the lower court's decision to stand as is would be to leave the citizens guessing as to what the law is, Solemn v Helm., or leave the law abiding citizen at the mercy of the whims and caprice of officers. Carrol v U.S., Giordello v U.S. and Johnson v U.S.

If the petitioner's cannot ask for or receive any of the rights enumerated above, how can the state process be of any use? What actual purpose would it serve and what would it resolve? The damage was all-ready completed when the petitioners were left in the dark, and the child was placed in special education. At that point, what was left to challenge? The process was and is in fact futile, and such futility is evi-denced as follows: The auto-matic stay pro-vision could not be accessed in this case since the child was removed from regular

classes and placed in special education classes before the petitioner, John E. Reardon, discovered that the child was in special education classes. The failure to provide notice to this particular petitioner has denied the state jurisdiction and still does so since notice is to bring the person and subject into the jurisdiction of the forum in question. The injuries were completed three years ago when the child was placed in special ed classes prior to the ability to utilize the administrative process, Sniadach v Family Finance Corp. The state's administrative code, which has not been declared unconstitutional,stands as an obstical to any person not considered a "par-ent given notice of the proposed action". The child has gone through three years of school. The petitioners have been denied the ability to an increased parent/child rela-

tionship and to stabilize the child's emotional problems which nearly caused his expulsion from school in 1986 and was prevent -ed from happening by the petitioner John E. Reardon's efforts and influence over the child. The state process cannot addres the factual and legal questions involved. It can not undue the trauma that the child and petitioners have suffered by the refusal of the respondents to comply with the law and to fullfill its obligation to the petitioner's. There was a concerted effort to keep the petitioner John E. Reardon in the dark and prevent him from obtaining the information in this case,which would have prevented the child from being classified, loss of his PSYCHOLOGICAL PARENT, loss of his home, his friends and the prevention of the emotional stress incurred by being forced to continue to live with his mother and not his

PSYCHOLOGICAL PARENT and NATURAL FATHER. And , because the petitioner J.E. Reardon is not privy to the information exchanged at the EAHCA meetings, he has no idea what was said or why it was said and therefore these Unconsituttional Ex Parte Conferences deprive these petitioners of the vital requirements to a fair, impartial and meaningfull hearing. How can the petitioner raise issue with anything that was done if he has no knowledge of what took place? How can the state claim that their decision is the best possible solution when it had no input from the petitioner J.E. Reardon? and Where such input would be that the child has only been considered emotionally distrurbed when living with his mother, that such "NEW EMOTIONAL" disturbtion may obviously be circumstantial and merely an acting out for the deprivation of his TRUE PARENT, His father.

What about the requirements of an appropriate education and the integrating of regular classes into the child's program to the maximum extent possible? Would it not be a MORE APPROPRIATE EDUCATION for a child to be in a regular class-room setting all-together than force him/her to face the stig -ma of classification and special education ? Wouldn't such a real prospect be more con -sistant with the over-all intent of the law to begin with?(i.e. to have the child in regular classes.) Wouldn't such a prospect be the MOST APPROPRIATE PUBLIC EDUCATION if it could be achieved? Would not it then be the responsibility of the state department of education and school to ensure and co-operate in the fullfillment of such a pro-gram regardless of how it could be accom-plished?(i.e. within the limits of the laws of the state,but requires them to co-operate

in giving expert opinion in a state court to demonstrate how this could be accomplished.In this case,it would require them to give testimony that it is their belief that since the child is only emotionally distrubed while living with his mother, and since the child was doing well in all aspects of education and life while under his father's care--the Psychological parent--that the manner by which the MOST APPROPRIATE EDUCATION can be accomplished to satisfy the Requirements under federal laws would be to place the child back in the care of the father where the child has fared well emotionally, educationaly, and physically, would prevent the need of having the child classified and stigmatized,would prevent the need for special education classes, or at least minimized such assistance and would have minimized the use of federal funds and valu-

able facilities.)

Since the court has not declared N.J. A.C. 6:28-2.7 unconstitutional under Art. VI , then it is part of the Supreme Law of The Land under Art. IV and X. As such, the court must then give full faith and credit to these codes. However, the court has remained mute as to the conflicts in the laws as they pertain to the particulars of this case.(Marbury v Madison, 1 Cranch 137.) This court found the purpose of notice, Ins. Corp. of Ireland, is to comlply with the requirements of due process--which must be set down in the statutes of the state, Leeper v Texas, 139 U.S. 462--and thus bring the sub-ject and person into the JURISDICTION of the forum. This has not been done. No Notice of any type, as per 34 C.F.R. 300.345 ,300. 504, 300.505 and N.J.A.C. 6:28-1.1(2); 2.1 (c), (d), (e); 2.3 (a)1 & 3, (c) and 2. 7

has ever been given or received by the Petitioner John E. Reardon for the 1984 placement and this has been ignored by the courts below. The federal courts are just as bound to uphold the Constitution and laws of the United States as state forums are by way of its oath of office under Art. VI and Miles v Ill. R. Co.

To allow the court's decision to stand without addressing all aspects of the laws would amount to a failure to carry out its duty and oath of office and would reduce our governement to one of men and not of laws, Solemn v Helm, to reduce its oath to Solemn Mockery, and thus a crime. Marbury v Madison. Is not a state government ORDAIN-ED AND ESTABLISHED by the Citizens of the state permitted to sovereignty and full faith and credit under Art. IV? Are not the Citizens entitled to be secure in the knowl-

edge that their government will act to protect their rights? and That such conduct on the part of such officers which willfully violates the laws and injures a citizen will not go unnoticed or un-corrected? Are not the citizens entitled to be secure that no other government will invade their state--and the U.S. Government is supposed to guard against under Art. IV Sec.4--and dictate to or nullify their will as provided by their own constitution and legislature, Cooley Const. Lim. 892. The lower court order amounts to an invasion into the sovereign power of the state, even if such power is un-der contractual obligation to the federal government. Its ruling has now said that the state must allow the petitioners to proceed in the state--while jurisdictional process has never been accomplished--it has said that N.J.A.C. 6:28-2.7 must be ignored, and

it is saying that the state must consider the petitioner a parent within the meaning of the federal laws. The only way that the court can alter a state statute and compel that it may not be used against a person to prevent the INTENT of the federal laws from being implimented is if it is first set aside under Art. VI. This was not done. Is this law abiding citizen now to guess what the laws is? If the law says that the PARENT GIVEN NOTICE OF THE PROPOSED ACTION may request a due process hearing, what is he and the courts supposed to imply this means? If it does not mean what it says, no proof to the contrary has been provided and thus seems to run contrary to the INTENT of the law, what right does the court have to order a state and a person not, apparently, cover -ed by the process to hear such a persons grievance or to utilize such a process? Does

not the U.S. Constitution under Art.s IV Sec.s 1,2 & 4 and U.S. Const. Amend. X prevent a federal court from interfering with Public Acts, Records and judicial proceedings? If there is a contractual agreement be-tween the state and federal governement and that agreement does not appear to have been broken because no Art. VI declaration has been made, can the federal courts intrude into the business of the state? And if that business prohibits or limits certain persons from accessing that process, and that process has not been declared unconstitutional, and such person has factual evidence to demonstrate the process was supposed to be accessable to him, is this not the type of conflicts, deprivations and questions to be presented to a court of law for settlement? Is this not the type of case that this court found in Mitchum v Foster to

be actionable under 42 U.S.C. 1983? If this is not the case, and these losses, and disputes exist, where is this person to go to excercise his 1st Amendment rights? If the state and federal court has entered into con -tract under federal law, and neither the state's codes under the law or the law itself have been declared unconsitutional under Art. VI, and the laws are not complied with by the state, does this not then amount to a denial of rights?(apndx. @ 95-100.)

As to the issue of conspiracy, the petitioner is left in the dark as to case law to rely on as 20 U.S.C. 1415 is devode of any case law involving conspiracy complaints. Since this is an area of law here that has never been settled and it is for this court to establish some criteria and guidelines for new areas, and since the lower courts have not so done, this court

should grant relief here to settle this area for EAHCA complaints and how they fit into the scheme for FUTILITY purposes. If a person is left in the dark by officer's who know they can not ask the permission of only one parent and they further then act to keep the non-notified parent in the dark, where is a parent supposed to turn when he/she does not know of the actions/in-actions that were taken? If he/she was never given notice, how can he/she know there is a necessity, requirement or ability to proceed in some fashion or where if the officers have never given the required notice and pamphlets which would inform the person what, when and where to do and go? How does a person not informed of anything, and never given notice of the child's placement, why he/she was placed, and what the IEP is supposed to be, do anything to try and rec-

tify the problems? Is it now the policy of state officials that unknowing and unwarry persons are supposed to guess what the law is and what to do? Are these persons now supposed to be punished by denial of recovery of injury for losses because of the officer's/agent's willfull violations of the laws? Are not officers from the highest to the lowest creature of the laws and bound to obey it?(Butz v Economou, 98 S.Ct. 2896, 2910.) Is not the reasons why officers are supposed to obey the laws is out fear of be-ing liable for not having obeyed it?(Smith v Wade, 51 LW 4407,4413.) Should not a person who has been injured by willfull violations of the laws be entitled to recover damages from said violators both compensator-ily and punatively?(Smith v Wade.)

Case 87-2823

The question here is to what extent is a Judge Immune from damages and when does such ABSOLUTE IMMUNITY attach? The U.S. Con -gress, in the Text "The U.S. Constitution -Interpretation and analysis", pages 1462 and 1463, ordered published under 2 U.S.C. 168, stated..

> The continuum of state action ranges from the obvious legislated denials of equal protection to the point at which private action is no longer sig -nificantly related to or brigaded with state action that the Amendment does not apply. The prohibitions of the Amendment "have reference to actions of the political body denominat -ed by a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal pro -tection of the laws...." Ex Parte Virginia, 100 U.S. 339, 346,347.

If the state is prohibited from doing some thing, and the state acts through its judi-

ciary, and the judiciary can only act in accordance with the powers given it by the state for immunity purposes, When a Judge acts in a fashion which is prohibited by the state or in a fashion which would indicate a non-action for and in the name of the state, Does the judge then have ABSOLUTE IMMUNITY FROM SUITS FOR DAMAGES? No one would question that a judge merely sitting on the bench and hearing a matter he is norm -ally authorized to hear acts as a Judge or for the state for immunity purposes. This can be exampled as follows:

> Suppose we take a New Jersey superior Court Judge and simply place him in a Pennsylvania Court. Since a New Jersey Judge is granted general jurisdiction to hear all causes of actions, would this judge now properly

> act as a judge to hear and try any case in this court? The answer is a resounding no. Because he has not acted in a manner prescribed by law where that law is the will of the people and its Constitution. Since this judge was not approved by the people and the law, he does not act in the name of the state or for the state and had no jurisdiction/power/ authority to so act and would not have any immunity from suit for his misconduct.

But suppose the Judge is not in another state, suppose the judge is still in his own state where he is a proper Judge? Is there some situation in which he would not act as a Judge for the state? There are two exam- ples here which clearly typify this situa-

tion.

1) Suppose a Judge were at a social event and a crime occurred or a criminal was brought before the judge by the police. We would not dare to presume that if the judge got 12 per -sons to act as a jury, found two lawyers to act as prosecutor and defense counsel, and then proceeded to try the matter that such process would onstitute a court, a valid Judicial act or proceeding or would grant immunity to the actors since Lynch mobs and Kangaroo Courts went out with the old west. The reason this is not a proper forum for immun -ity purposes is it was not conducted in accordance with the will of the people through their State Con-

stitution and State Statutes.

2) This court found that a judge has no absolute immunity from suits when he acts as an administrator since he is not acting in his judicial capaci -ty to hear matters and decide them. (Goodwin v Circuit Court of St.Louis Co., 53 LW 3079, cert. den. 53 LW 3237 and this courts decision in Forrester v White, Case # 86-761.) But again, the court did not have immunity because he has not acted as a judge in a time and manner pre- scribed by the will of the people through its laws.

What then should be the basis for determin- ing when a judge is a judge? In Todd v U.S., 158 U.S. 282,284 the court found, relying

on Mr. Justice Story, as follows:

> A court is not a Judge, nor a Judge a court. A Judge is a PUBLIC OFFICER , who, by virtue of his office, is cloathed with Judicial Authorities. A court is defined to be a place in which justice is Judicially administered. It is the excercise of Judicial Power, by the proper officer or officers, at a time and place appointed by law.(U.S. v Clark, 1 Gallison, 497.)

But isn't this the same thing this court indirectly found and implied in Stump v Sparkman? Did not the court state that the requirements of Judicial Immunity are:

> 1) Wether the act is something normally conducted by the Judge.
> 2) What are the expectations of the parties in dealing with the Judge. &
> 3) Is there case law or statute which prohibits the judge from considering the specific matter before him.

Do not these questions/criteria say that a judge is a judge so long as he acts in a time and fashion prescribed by the law of the Land/The will of the People? At 1105 Supra the court specifically stated that

even the Judge in its genereal jurisdiction capacity could be liable if there was statute or case law prohibiting the judge from acting on the petition before him. How can we then distinguish between a court's gener -al power and its specific power? This court has seemed to indicate, Supra @1105 and 1106,that had the court been granted authority to hear sterilization petitions but was specifically limited as to what he could do,then the court might be liable.Such a condition which seemed to be inferred could be exampled by the following..

> The courts are empowered with the right to hear petitions for sterilizations of retarded children. However, where the child is not of such a severely retarded condition that they are totally incapable of caring for themselves or another--such as an infant, the court may not order the sterilization of such a child. (ex. code.,Ind. Code Sec. 33-4-4-3 (a))

If this statute were in existence the

conclusion of this petitioner on the Stump case would be the judge would be prohibited from ordering the sterilization of the child and would not be immune. In this case, the petitioner was charged with threat to do Domestic Violence, 2C:25-12 thru -14. These statutes made the legislative will clear. That ex parte matters and orders must be returned within 10 days,and thus,such orders are temporary and binding during this period of time. But more importantly, if the matter is not returned within 10 days, there is no longer any matter before the court. These requirements then go to satisfy the re-quirements of due process as required in Leeper v Texas, 139 U.S. 462 when the court found:

> In order to satisfy the requirements of due process, they must be incorporated into the statutes.

The state has done this, and the judiciary is bound to comply with the intent of the laws of the state, E.T. v L.P., 185 N.J. Super. 77, and the court has thrown off the very cloak of immunity that breathed life into its powers to act for the state. If there is no matter before a court to decide, how can it be said he acts in the name of the state for immunity purposes? When the court adopted common law immunity for judges , was it not adopted with the idea in mind that the state has a position of sovereign immunity from suits when it acts in its prop -er capacity to legislate and protect rights? If the Judge is directed by the legi -slature to return a matter back to court in a specified period of time, does this not then direct the time and manner in which the judge is granted authority to act for the state? And, if it does so set the time

and manner by which the judge is to be considered a judge acting with the immunity afforded judges, how can any decision of the court in such cases be considered as valid and enforceable? If a Judge is a PUBLIC OFFI-CIAL, is he not required to serve the public and comply with the laws and will of the people who permitted him to sit as a Judge? Should not the people be entitled to sue for damages against a judge who refuses to obey their will and laws when it is their duty to enforce the laws and protect against encroachments of rights.(U.S. v Boyd ,166 U.S. 616,635.) Does not the state,and thus its officers, only act in its sovereign capacity due to the good graces of the people who have granted this power to justly govern.(Thomas Jefferson's Declaration of Independance.) To allow a judge to shrug off the very statuatory cloak of immunity which

was granted him by the will of the people and to remain immune would be to reduce our system of government to one of men and not of laws for which we boast.(Soleman v Helm, @ 5030.) And would be to reduce our government to a despotism.(State v Deatore, 70 N. J. @510, relying on U.S. v Boyd.) This would be to then deprive the people of the very government they did "ORDAIN AND ESTABLISH" for the protections of rights.It would deprive them of the full faith and credit of the three branch system of government they are guarenteed under Art. IV Sec. 4. It would violate this governements responsibil -ity to protect the state government from invasion and change by usurpation of authori -ty or otherwise under Art. IV Sec. 4 and would permit the court to place itself in the very seat of power, to unilaterally destroy the government that "We the people of

N.J." did establish, to leave the law abiding citizen guessing what the law is,Solemn v Helm @5030, and to leave such citizens at the mercy of officers whims, caprice and mis-conduct.(Carol v U.S.) But more importantly, to allow such a judge to usurp the power granted by the people to unjustly rule would be to place the people at the feet of of tyranny and oppression.(apndx.@ 95-100.)

The next question is what is the posi-tion of a Judge who hears a matter that was fraudulently brought to the court? Can a Judges claim immunity from liability from suit when the matter he is hearing is only before him because some Court related employ-ee has gotten access to--either directly or with assistance--his rubber stamp and so stamps an order that the Judge knows nothing about till the return date of the hearing? If an order is rubber stamped that the judge

kows nothing about, the matter is not something that was leagily before him to begin with. If such a judge is now permitted to go free from liability for his illegal misconduct would be to deny the existance of the concept of "Law and Order", "Society", "Free-dom", "Justice" and the Constitutions of both the State and U.S. Government. How can a judge who is sitting on a matter brought before him only because of wrong doing and criminal misconduct be considered as state action or conduct within the capacity of a judge to sit as such and act as such? Where is the security, freedom, and safeguards of our government if a Judge can be elivated to a position second only to GOD?

Can a Judge be held accountable for suit in damages if he commits extortion? This court found that a judge carries out an Unconstitutional Act of Authority when

he orders a person to testify against him/her-self in violation of his 5th Amendment rights, even if that process is civil in form. It further went on to say that if a judge punishes, places sanctions on or finds a person guilty as charged for not having tesified, he commits extortion.(U.S. v Boyd) Where the parental rights of a person are at stake, and the state statutes only permit a judge to order Counselling--not for the purpose of self incrimination, can a judge claim immunity from suit for an act that no officer of any level may commit? (Butz v Economou, 98 S.Ct. 2896,2910.) Can any judge order a person to testify against themselves, in violation of well settled law , and be immune from suit for damages? The state Supreme Court of Minnesota found in cases C9-87-165 & C5-87-194:

> that where a parents rights to his children are at stake, his 5th amend

> -ment rights are triggered and they cannot be compelled to testify- against themselves.

This court found in Testa v Katt, 67 S.Ct. 810:

> The policy of a state court against enforcement of the Supreme Law of The Land is not valid if claims grow out of IT since IT is the prevailing Policy.
>
> The State of N.J. has not adopted a 5th amendment clause because it has taken the common law policy from the U.S. Constitution. and

In State v Deatore, 70 N.J. 0510 the state Supreme Court,relying on U.S. v Boyd, found:

> No person can be compelled to testify against himself, as such a thing is not consistant with a free form of government but indicative of a despotic government.

Is not a despotism exactly why our for fath -ers fought England and died to set themselves free from? Was not this the very reasons set out in the Declaration of Independance why "WE THE PEOPLE DID ORDAIN AND ESTABLISH OUR SYSTEM OF GOVERNMENT FOR"? If a Judge can usurp his power to place him-

self at the very "THRONE OF POWER", and the people have no direct means of removing the judge, and the executive branch will not pro-secute these judges for their willfully injurious criminal mis-conduct, who will stand to stop this tyranny? Should not the Supreme Court under Art. IV Sec. 4 act to grant the people a means of direct redress against such usurpations of authority before the despot grows out of control? Is this the type of FEARLESS DECISION making contemplated by judicial immunity?(Dennis v Sparks, 449 U.S. 30.) Should not this court send out a signal to all judges to place them back on the track of freedom by holding such unlawfull and eggregious conduct accountable to such judges who believe they are GOD AND ABOVE THE LAW? Where will it stop if there is no-one to do anything to stop it?

Intentional Infliction of Emotional Distress

Justice Kennedy stated in McIntyre v McIntyre, 771 F.2d 1316 That the intentional infliction of emotional distress is a tort action over which the federal courts have jurisdiction under the civl rights statutes. This court found in Carey v Piphus,98 S.Ct. 1042 that the infliction of emotional distress caused by deprivation of due process is cognizable in federal courts and in Powel v Penn. Housing Fin. Agency, 536 F. Supp. 419 that the emotional stress caused by the loss of rights is cognizable in Federal courts. Thus, it stands to reason why Addick-es v Kress & Co., 398 U.S. 144 is applicable since this court found that even if the particular statutes in question do not provide for damages, the party may have a claim that would still stand for suit in dam

-ages for the conduct in question under some other section of the laws. Here we have a tort which is within the jurisdiction of the federal courts under tort law for civil rights, and we have federal laws which do not provide direct relief under such statutes. The question placed to the court was That the Addickes Case should control and the court rejected this claim on the basis that federal law requires exhaustion of administrative processes. Here we have another first for the courts. There is no case law on the subject of intentional infliction of emotional distress arising out of misconduct by officials who violated the EAHCA laws. The court has never answered this question and the congressional record is not totally clear and un-ambigous on this matter. Congress felt that mis-conduct in special educa -tion was out of control and a concern.

This is why EAHCA was passed. In specific they found:

> The Committee is deeply concerned about practices and procedures which result in classifying children as having handicapping conditions when, in fact, they do not have such conditions. These practices have been brought to the Committees attention at hearings and in recently published studies. P.L. 94-142, page 1450.
>
> The problem is not the classification itself, since the classification is a necessary tool designing appropriate instruction. The problem is the STIGMA that such a classifica -tion carries with it...@ 1451.
>
> The Committee is alarmed about the abuses which occur in the testing and evaluation of children...@ 1453.

The only case law which seems to come close to addressing this problem is that of Hose P. v Ambach. In the petitioner's case the child was placed in special education classes based on two year old rejected reports by the Lindenwold child study team,the class -es did not obviously meet the child's needs since the child's behavior did not im-

prove in the special education classes in 1985/1986, and in school year 1986/1987 the child was nearly expelled from school. How has the process ensured the abuses Congress was concerned with were not encountered? How has the process accomplished what it was de -signed to do other than to cause emotional stress for the petitioners? Clearly, the process in this case is totally futile and meaningless and the only available course is in suit under 42 U.S.C. 1983 for both declaratory, equity and damage relief, but the court below did not see this. Since this is a new area--even referred to by this court in the Smith case, ft. nt. 17 pages 3469-3471--the court should settle this area of law for future such cases and misconduct.(see also 658 F.2d 1205, 1213-1215.)

Failure to address issues:

Thomas Jefferson wrote in the declara -tion of Independance that where there has been a course of usurpations of power, and a course of tyranny and oppressive activity that it is man's right to shed himself of such a government to establish their rights in accordance with their will and the will of their creator. He wrote that such usurpations and oppresive acts by England were its refusal to hear their petitions for redress of grievance, or to bring false charges against the people and try them in inconvenient forums. Here the court found in Wood v Strickland,95 S.Ct. 992,that where Issues had not been answered below, the court would defer that question back to the lower court for answer from them first. Here the court has been presented with a suit involving six counts. While it has addressed counts 1,2 & 5, it has remained mute on

counts 3,4 & 6. In so doing, the court has deprived these petitioners of a record to appeal from on these counts, have denied due process of law and deprived the petitioner 's of their first amendment rights to petition for redress of grievance. The court is required to answer all issues or what would the purpose of any court of law be? Why have courts if they can silence a person by simply refusing to answer a complaint and dissmissing it without cause or reason? Where are the Constitutional safeguards and rights of people? Where is the Constitution if a court can refuse to address complaints? How does a person prove any possible error or abuse if the court is to remain mute on the subject? The only possible appeal is to ask the court to order the lower court to answer complaints before it? But if this fails, then we will permitt the courts to reduce

our government to the whims and caprice of men rather than of laws for which we boast. We will be throwing away the very foundation that has kept this country together and made it what it is these last two hundred years. For a court to refuse to address issues before it is clearly an abuse of discretion and should not be permitted, and to allow this would be to chain a man in his own rights.(Farretta v Ca. 422 U.S. 806,815)

The petitioners leave this court to ask itself how justice has been served in this case when the judges opinion is frought with conflicts. If the court will examine pages 2,27,40-44,50-55,125-136 & 191-206, it will see the lower court settling a factual dispute of wether this person is a parent. But more importantly, if the Mr. Reardon is not a parent as per N.J.A.C. 6:28-1.3,then how does he have any responsibility to util-

ize EAHCA? and If he was to be considered a parent, clearly pages 40 & 125-136 show Mr. Reardon was denied these rights Congress said was to be guarenteed and clearly this case is in fact Futile. But then there is also the conflict with the judge's opinion as compared to pages 2 par.1 & 12 par.2. Again, if Mr. Reardon is not a parent, how can he utilize a process not available to him? Finally, there is the conflict between pages 2 par.1 and page 4 par.1. If the plain -tiff has no custody rights,how can Mrs. Reardon seek to change or deny something the court claims Mr. Reardon did not have? (appendix @137 & 191-206)

In sum, to leave the lower courts decision to stand would be to throw away the Constitution of the United States and the concept of Justice and redress of grievance. It would be to totally Ignore U.S. Const.

Amend. XIV by way of Art. I, IV and VI. It would be to ignore the Congressional intent of EAHCA and the Public Acts of both the State and Federal Government and to ignore and reject the criteria in all cases cited.

If the court allows the lower court decisions to stand, it will be sending a signal to the states and the Judges thereof that they are above the law, that it is O.K. for them to willfully violate the laws and discard the social laws that the people of this great nation have felt were needed to bind this country together. It will be saying to the Judges and states that society is only what you deem it to be and feel proper and not what the people have required of you. The time has come for this court to address the tyrannical acts of a government out of control, for if it does not, the possible consequences is the total distruc-

tion of the family, the total anihilation of the Father/child relationship and the ultimate and needless suffering of children because the courts favor women and refuse to obide by the social laws, and life giving laws of the people through their government. Fathers are rapidly approaching the stage that Blacks reached in the 60's, will it be the legacy of this Court and this nation that civil riots broke out because our government refused to protect against treasonous, tyrannical, oppressive and usupatorial actions of a judiciary out of control because it is more important to protect a judge than to protect society and the people who gave power to this government to justly rule? And Where will little children turn to for help when the govenrment that is supposed to pro-tect them has abused, traumatized and victimized them for the sake of protecting the

misconduct of public officials? Is this the type of decisions that this country is to remember its courts by? That children can be turned into criminals, caused to have nervous breakdowns, or whatever else may occur because the Judge and State officials must be protected at all costs? Where is justice? Where is Our Constitution? Why did our for fathers waste their time and give up their life. To create this?!

Wherefore, Petitioners reserve the right to raise any and all issues of relevant error and/or abuse of discretion at a later date if this wirt fails. Said rights are reserved because Judicial economy so pre-vented them from being raised herein.

Conclusions

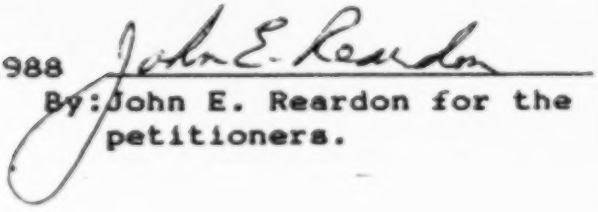
The petition for writ of certiorari

should be granted. Respectfully submitted.

John J. Reardon
Judith A. Reardon
John E. Reardon

Petitioners.

Dated: June 5,1988



By: John E. Reardon for the petitioners.

PETITION FOR WRIT OF CERTIORARI

CASE NO._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1987

John E. Reardon, et al, Petioners

v

Virginia Reardon, et al, Respondents

APPENDIX

John E., John J. &
Judith A. Reardon,
Oakridge Terrace--B33
Runnemede, N.J. 08078.

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U.S. District Court
District of N.J.

John E. Reardon,et al	:	Civil Action No.86-408
Plaintiffs,	:	OPINION
v	:	
Viriginia E. Reardon, et al	:	
Defendants.	:	

Appearances:

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Collingswood Brd. of Ed. and
Dr. Gordon)

Rodriguez, District Judge

I. FACTS AND PROCEDURAL HISTORY

Virginia E. Reardon and John E. Reardon were married on May 12, 1973. Virginia Rear-don inatituted a divorce complaint for extreme cruelty in 1983. A final Judgement of Divorce was aigned on July 23, 1984 by the Honorable Robert W. Page, J.S.C. Pursuant to the Judgement of Divorce, Virginia Reardon is the cuatodial parent and legal guardian of the two children of the marriage. Plaintiff John E. Reardon was to have cuatody of the children two weeks each summer.

On January 1, 1986, the Plaintiff John E. Reardon, [1] proceeding pro se, filed

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[1] Plaintiff's minor son, John J. Reardon, is also a plaintiff in Civil Action 86-408.

Civil Action No. 86-408 in United States Dis-trict Court in Camden, N.J. The complaint seeks damages and equitable relief under the Civil Rights act of 1871, 42 U.S.C. 1983 and the Education for all Handicapped Children Act of 1975.("EAHCA"), 20 U.S.C. 1400, et seq. Defendants include Virginia Reardon, Collingswood School Baord, Collingswood Child Study Team, the principal of Zane North School, and several named and unnamed special education teachers.

The following factual allegations form the basis of the plaintiff's complaint: In March of 1984 the plaintiff's son was transferred to Collingswood School System and subsequently placed in a special class for children with behavioral and emotional problems. Complaint No. 86-408 paragraphs 8 and 19. Plaintiff claims that the educational placement of his son was instituted in viola

-tion of "EAHCA" and the state laws and regulations regarding special education.[2]

Plaintiff also contends that the defend -ants, all but on of whom are "state offi- cials," have conspired to deprive him of his constitutional rights in violation of the Civil Rights Act of 1871, 42 U.S.C. 1983. Complaint No. 86-408 paragraph 13. In this regard defendants have allegedly prevented plaintiff from participating in the decision -making process concerning the educational placement of his son. Complaint No. 86-408 paragraph 14 and 18.

While Civil Action no. 86-408 was pend- ing, defendant Virginia Reardon applied to the Suprerior Court of New Jersey, Chancery

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[2] Plaintiff's citation of N.J.S.A. 6:28-2.7, 2.8 and 3.5 obviously refer to the ad- ministrative regulations promulgated by authority of N.J.S.A. 18A:46-1 et seq. which are contained in the N.J.A.C. chapter 28 en -titled "Special Education."

Division, Camden County for an order enjoining plaintiff from exercising custody or visitation over the children born of the marriage. Docket No. M-04123-83. Virginia Reardon's affidavit in support of that motion reveals that she was motivated by fear for herself and her children's safety. On July 2, 1987 the Honorable John L. Miller, J.S.C., signed the requested order which restrained plaintiff from coming into contact with Virginia Reardon and the children until further order of the court.

In September, 1986, plaintiff John E. Reardon had also instituted Civil Action No. 86-3560. In this action plaintiff sued Virginia Reardon and numerous others, many of whom are defendants in Civil Action No. 86-408. The defendants include but are not limited to the Honorable Stanley S. Brotman, the Honorable Edward F. Mennetti, The United

States Government and the State of New Jersey. Civil Action No. 86-3560 alleges due process and equal protection clause violations stemming from the educational placement of plaintiff's son. Additionally, Judge Brotman's denial of plaintiff's requested injunctive relief in No. 86-408 is subject of many of plaintiff's allegations of constitutional deprivations. [3]

On July 10, 1987, the Honorable Joseph J. Farnam, U.S.D.J., dismissed all claims against the United States. Summary judgement

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[3] On August 19, 1986, plaintiff, in civil Action No. 86-408, applied for temporary restraints on the educational placement of his son in a special education program and for preliminary injunctive relief in the form of the provisions of in-school psychological counseling services for his son.

The Honorable Stanley S. Brotman, United States District Judge, denied plaintiff's application for relief on August 21, 1986. Judge Brotman found little likelihood of success on the merits.

Plaintiff had also failed to sustain his burden of showing irreperable harm.

was granted in favor of the Honorable Stanley S. Brotman. Civil Action No. 86-3560 was stayed pending the resolution of Civil Action 86-408. [4]

On July 21, 1987, plaintiff instituted yet another civil action in this court. [5]

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[4] The defendants remaining in Civil Action No. 86-3560 are:Virginia Reardon,Marshall Gordon,Mary Mahon,Mr. Cochraine,Miss Dayton, Mr. McDonnel,Mr. Lombard,Mrs. Schilling, Collingswood Board of Education, Collingswood Child Study Team,Robert Fisler,Mr. Carl Lemmer,"John Doe" (case workers in the Camden County Probation Department), Judge Edward Mennetti and the State of New Jersey.
[5] In addition to filing the aforementioned litigation, namely No. 86-408, No. 86-3560 and No. 87-2823 discussed infra, plaintiff John E. Reardon has also instituted No. 87-3605 against Virginia Reardon, Sgt. Smarzyaski, The Voorhees Police Department, Voorhees Township, Judge Keyko, The Runnemede Police Department, The Borough of Runnemede, Patrolman C. Van Camp and Ann Cara.

In No. 87-3605, plaintiff disputes the state court's jurisdiction over him given pending federal cases 86-408, 86-3560. In addition, No. 87-3605 centers upon alleged "false" arrest warrent issued against plaintiff. The warrant was issued against plaintiff for disobeying "a judicial order issued in Superior Court of New Jersey, Docket #M-04123-83 on July 2nd, 1987 by Judge

Civil Action No. 87-2823 names as defendants Virginia Reardon, Terrance Costa, The Honorable John Miller, Dr. Goldstein and Dr. Gordon. There are several counts. The first alleges obstruction of justice by all defendants except Dr. Goldstein.The allegation is based upon the state court's supposed interference with the federal court's jurisdiction in Civil Action No. 86-3560. The second count is more imaginative in that it acuses the defendants of kidknapping. Plaintiff claims that "the state does not have jurisdiction or authority over the children and is in fact holding them captives against their will." Complaint No. 87-2823, Count II, paragraph 5. Count Three charges defend-

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John L. Miller, J.S.C. by coming into contact with Virginia E. Reardon and her children after being ordered not to do so, contrary to N.J.S. 2C:29-9." Warrant, issued August 17, 1987 by Voorhees Township Municipal Court.

ants with willfully depriving the plaintiffs of their right to love and affection. Count four alleges interference with plaintiff's right of free choice and right to litigate a pending claim. In Count five, plaintiff claims that defendants and indeed the court system in general have engaged in a practice of willfull discrimination against fathers in custody disputes and that this conduct is violative of the Equal Protection clause. Plaintiff also alleges that the state court lacked jurisdiction in Docket #M-04123-83 be-cause the plaintiffs were parties in a pending lawsuit. The sixth and final count lists numerous rights of plaintiff which were allegedly violated by defendants without due process of law. [6] These are large-

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[6] The alleged violations of plaintiffs' constitutional rights are: (1) right of free choice to prosecute a claim; (2) due process of a proper forum to proceed on a pending lawsuit; (3) due process right to he heard

ly repetitive of the allegations contained in the earlier counts.

II. Consolidation

Presently before this court is a motion by defendants Collingswood Board of Education and Dr. Gordon to consolidate No. 86-408 and No. 87-2823. Defendants Mahon, Lombard, Schilling and Dayton join in the motion to consolidate the two actions.

In addition, the court will also consid-er the motion to dismiss plaintiffs' com-plaint originally filed on behalf of the de-fendants Mahon, Lombard, Schilling and Day-ton. Defendants Collingswood Board of Edu-

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beforehand; 4) right to be confronted by your accuser; (5) right to litigate a claim; (6) right not to be held captive even if under protective custody; (7) right to love, affection and company of plaintiffs to each other; (8) right to care, custody and management of plaintiff children by John E. Reardon; (9) right of plaintiffs (children) to look to John E. Reardon for guidance;and (10) right to impartial hearing/tribunal.

cation, Dr. Gordon, Virginia Reardon, pro se , and Marshall also join the motion to dismiss.

Federal rules of Civil Procedures 42(a) governs consolidation. It provides:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the material issues in the action; it may order all actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

The court finds there are indeed questions of law common to No. 86-408 and No. 87-2823. In both actions plaintiff questions the educational placement of his son and claims his constitutional rights as a non-custodial parent have been violated. In Fact

, No. 87-2823 arose, in part, as a result of plaintiff's discontent with the progress of No. 86-408.

Because the court finds issues of law common to both No. 86-408 and 87-2823, defendants motion to consolidate the two actions is hereby granted.

III. MOTION TO DISSMISS

A) "EAHCA"

The court must next consider defendants' motion to dissmiss plaintiffs' complaint. Plaintiff contends in Action No. 86-408 that the education placement of his son was carried out in violation of the Education for All Handicapped Children Act of 1975, ("EAHCA"), 20 U.S.C. Sec. 1401 et seq.Accord -ing to the plaintiff, no efforts were made by defendants Collingswood School Board , Child Study Team, Mr. Cochraine (school principal), or the various special education

teachers to comply with federal law, complaint No. 86-408 paragraph 17,or with state administrative regulations promulgated thereunder and contained in N.J.A.C. 6:28-3.5, Complaint No. 86-408 paragraph 12. All defendants have allegedly joined in a conspiracy to deprive plaintiff of information to which he feels he is entitled and to keep him from exercising his "right" to participate in the decision-making process regarding his son's education. In conjunction with these supposed violations, defendants, acting as state officials, have also alleged-ly caused plaintiff to suffer damages under Sec. 1983. [7]

Plaintiff requests relief in the form

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[7] Plaintiff does not suggest that Virginia Reardon is a state official. However, according to plaintiff,defendants have "lent their authority to Mrs. Reardon" in connection with these alleged violations. Complaint No. 86-408 paragraph 13.

of compensatory and punitive damages. Equitable relief is sought as follows: (1) that the current program and evaluation be declared improper and halted; (2) that a new evaluation be conducted at the school system's expense by an outside agency of the plaintiff's choice; and (3) that any new program be approved by plaintiff or else not instituted. Complaint No. 86-408.

The Education for All Handicapped Children Act, 20 U.S.C. 1400, et seq., assists states in identifying and evaluating handicapped children and providing them with a free appropriate public education. See Board of Education of Hendrick Hudson Central School District v Rowley, 458 U.S. 176, 102 S.Ct. 3034, 3048, 73 L.Ed.2d 690 (1982). In order for state and local education agencies to receive federal funding under EAHCA, the conditions for eligibility set out in Sec.

1412 must be met. Eligible states must also submit plans outlining their policies and procedures for compliance in accordance with Sec. 1413. In addition, the procedural safe-guards outlined in Sec. 1415 must be included in the state and local agency's educa-tional program.

> Those safeguards encompass both admin-istrative and judicial proceedings. On the administrative level they must include, but are not limited to: the opportunity for a parent or guardian of a handicapped child to examine the child's records and to obtain an independent educational evaluation of the child, Sec. 1415(b)(1)(A);written prior notice to the parent or guardian whenever the school district pro-poses or refuses to initiate or change the child's identification, eval-uation,or placement,Sec.1415(b)(1)(C) ;a requirement that, when feasible,Par-ents be informed in their native language of all the provisions available under section 1415 (b)(1)(D); and an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or edu-cational placement of the child, the provisions of a free appropriate public education to such child,Sec.1415 (b)(1)(E). A parent who has filed such a complaint has the opportunity for an im-partial due process hearing.Sec.1415

> -partial due process hearing, Sec.1415 (b)(2),and any party aggrieved by the findings and decision of that hearing, may appeal to the state educational agency for an impartial review. Sec. 1415(c). Parties to the administrative hearings have the rights to be advised by counsel and by individuals with spe -cial knowledge or training in the prob -lems of handicapped children,to pre- sent evidence,to confront,cross-examine , and compel the attendance of witness -es,to a record of the hearing,and to written findings of fact and decisions ,Sec.1415(d). A decision at the end of the administrative process is final ex -cept for judicial review authorized by Sec. 1415(e) (2).That judicial review is available to "any party aggrieved by the findings and decision" at the ad- ministrative level.Such an aggrieved party may bring a civil action 'with respect to the complaint' presented pur -suant to Sec.1415. The action may be may be brought in state court or in a United States District Court, which 'shall receive the records of the admin -istrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court deter- mines is appropriate.Sec. 1415 (e)(2).

Quackenbush v Johanon City School Dist., 716 F.2d 141, 145-146 (2nd Cir. 1983.)

New Jersey receives EAHCA funding. As such, it has established its own comprehen-

sive administrative regulatory scheme in order to comply with EAHCA requirements. See N.J.S.A. 18A:46-1 et seq. and the administra-tive regulations promulgated thereunder at N.J.A.C. 6:28-1.1 et seq.

These regulations outline the proper procedure to follow in the event of a dispute between parent and school system. N.J.A.C. 6:28-2.6 provides that conflict resolution efforts are available through local district administrative review and Department of Education mediation:

> (b) Attempts to resolve conflicts through an administrative review by the local district shall be provided as follows:
>
> 1. Each district board of education shall establish an administrative review procedure consistant with the foll-owing.
>
> 2. Within 20 calendar days after a

written request or an administrative review is received, the responsible agent of the district shall conduct an administrative review which shall be:

i. Informal;

ii. Held at a time and place con--venient to the parties in the dispute.

(c) Attempts to resolve conflicts through mediation by the Department of education shall be provided as follows:

1. A request for mediation shall be made in writing to the Department of Education with a copy to the other party.

2. The Department of Education through its county office shall provide a mediation conference within 20 calendar days after receipt of a written request at which time:

i. Issues shall be determined;

ii. Options explored;

iii. Conflict resolution attempts made within the confines of New Jersey law and code.

N.J.A.C. 6:28-2.6(b) and (c).

Resort to the two conflict reolution device cited above is not mandatory. N.J.A.C. 6:28-2.6(a)(2) provides that "if either party is unwilling to participate in a conflict resolution effort, a request for a due process hearing under N.J.A.C. 6:28-2.7 may be made directly to the Department of Education." A due process hearing is intitiated by regueating such hearing in writing to the Department of Education with a copy to the other party. N.J.A.C. 6:28-2.7(a)(1). [8]

Clearly there were administrative procedures available through which plaintiff

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[8] N.J.A.C. 6:28-2.7 further provides that upon receiving the Department of Education's acknowledgement, the parties shall exchange

could seek relief. Plaintiff's citiations to the regulations cause this court to doubt that he was unaware of the appropriate course to follow.Plaintiff's efforts at dis -pute resolution consisted of various inform -al attempts at communications with school officials, Complaint No. 86-408 paragraphs 10,11,14, 18. When these efforts failed to achieve the desired result, plaintiff resort -ed to the federal court system.

Plaintiff at no time in his complaint alleges any attempts to comply with the ad- ministrative process available to him under N.J.A.C. 6:28-2.6 and 6:28-2.7.

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relevant records and information; within seven days of the receipt of the request, the Department of Ecucation shall conduct a settlement conference; and if no agreement is reached, the matter is to be transmitted to the office of Administrative Law for a hearing according to N.J.A.C. 1:6A.

Plaintiff cannot ignore the state admin -istrative process and proceed directly to federal court. It is well settled that the Education for All Handicapped Children Act of 1975, 20 U.S.C. 1401, et esq., requires exhaustion of available administrative remedies prior to instituting an action in district court. 20 U.S.C. 1415(e)(2). See Tokar -cik v Forest Hills School District, 665 F. 2d 443, 448 (3rd Cir. 1981.) See also Riley v Ambach, 668 F.2d 635 (2nd Cir. 1981)

Because plaintiff has failed to exhaust his state administrative remedies,this court lacks subject matter jurisdiction over his EAHCA claim. The state administrative mechanism remains available to plaintiff. Unitl he has properly utilized this procedure, this court is without jurisdiction to hear his claim.

Plaintiff's EAHCA cause of action is

hereby dismissed for lack of subject matter jurisdiction.

B) Sec. 1983 CLAIM

In Action No. 86-408 plaintiff also seeks damages under the Civil Rights Act of 1871, 42 U.S.C. 1983. (9) He claims that de-fendants, acting as state officials, violat-ed state and federal laws regarding the evaluation, classification, and placement of handicapped children.

Plaintiff's Sec. 1982 cause of action fails as well. In Smith v Robinson, 468 U.S. 992 (1984), The United States Supreme Court

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(9) "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, priviledges, or immunities secured by the constitution and laws,shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

held that the Education of the Handicapped Act is the exclusive avenue through which a child and his parents or guardian can pursue their claim to a free, appropriate public education. Id. at 1009

> The EHA is a comprehensive scheme set up by Congress to aid the states in com -plying with their constitutional obli- gation to provide public education for handicapped children. Both the provi- sions of the statutes and its legisla- tive history indicate that Congress in- tended handicapped children with consti -tutional claims to a free appropriate public education to pursue those claims through the carefully tailored admini -strative and judicial mechanisms set out in the statutes.
>
> ....allowing a plainti[illegible] to circumvent the EHA administrative r[illegible]edies would

be inconsistent with Congess' carefully tailored scheme.

Id. at 1009. See also McGovern v Sullins, 676 F.2d 98, 99 (4th cir. 1982.), (In almost all respects, the detailed statuatory procedures of the EAHCA, calling for administra-tive and judicial actions whenever a child , parent, or guardian, on the one hand, or education agency on the other considers himself a person agrieved, cover and prescribe the only route to relief anticipated by Congress.) Department of Edu ., State of Hawaii v Katherine D., 727 F.2d 809, 820 (9th cir. 1984.), (We hold that the complex provisions of section 1415 of EAHCA, which established detailed procedures for administrative and judicial review of the state's proposals to educate handicapped children, create a comprehensive and exclusive remedial scheme that precludes reliance upon a

cause of action under section 1983").

Plaintiff's reliance upon Quackenbush v Johnson City School District, 716 F.2d 141 (2nd Cir. 1983), is misplaced. In Quackenbush, the Second circuit acknowledged that the judicial review provided by sec. 1415(e)(2) of EAHCA is an exclusive remedy that can neither be supplamented nor replaced by an action under 42 U.S.C. 1983. Id. at 147. The Second Circuit went on to hold, however, that the particular facts of the case warranted allowing plaintiff to pursue her Sec. 1983 cause of action. In Quackenbush, the plaintiff was concerned with her son's lack of progress in school. Id. at 143. She sought review of her son by the school district's Committee on Handicapped. Id. According to plaintiff, the school official instructed her to leave a portion of the parental permission form" blank. Id. The offi-

cial later allegedly checked off the wrong box on the request form, incorrectly signifying that the plaintiff withheld permission to have the school district evaluate her child. Id. at 143, 149. Plaintiff claimed that the official's actions were in accord with a school district policy to refuse special education to handicapped children for financial reasons. Id. at 143.

The Second Circuit found that such official misconduct deprived plaintiff of ever reaching the "findings and decision" stage, which would otherwise follow the impartial due process administrative hearing contemplated by Sec. 1415 of the EAHCA. Because plaintiff had thus been denied her procedural safeguards under the EAHCA by reason of a forgery, a cause of action under the Civil Rights Act was available to her. Id. at 148.

By Contrast, plaintiff John E. Reardon fails to allege that he attempted to utilize the formal administrative procedures available to him and was prevented from doing so by defendants' actions. As has been discuss-ed, plaintiff sets forth in his complaint nothing but informal attempts at dispute resolution prior to his instituting legal action. Because plaintiff fails to allege facts from which the court can conclude that defendants prevented him from utilizing the administrative process, Quackenbush is distinguishable and plaintiff cannot rely upon it.(N.J.A.C. 6:28-2.7 & app. pgs.40-44)

Furthermore, the third circuit has re-cently questioned the vitality of the Quack-enbush decision in light of Smith v Robinson, 468 U.S. 99. (1984). In DeLeon v Susque-hanna Community School Dist., 747 F.2d 149 , 150. n.1 (3rd.cir.1984) The Court stated:

The Supreme Court has recently held that the provisions of the EHA are the exclusive means by which a handicapped child may assert the right to a free, appropriate public education. Smith v Robinson,___ U.S. ___,___, 104 S.Ct. 3457, 3468, 82 L.Ed 746 (1984).... ...The EHA does not provide an explicit cause of action for a parent aggrieved by the failure of a school district to comply with Sec. 1415(e)(3). The plaintiffs claimed damages under 42 U.S.C. 1983; we note, however,that the Supreme Court has recently held that the EHA remedies are not to be supplamented by means of Sec. 1983. Smith v Robsinson, ___ U.S. ___, 104 S.Ct. 3457, 82 L.Ed. 2d 746 (1984). Although two circuits have held that Sec. 1983 is available to fill in the 'gap' in the EHA reme-

> dies through which this case might otherwise fall, see Quackenbush v Johnson City School Dist., 716 F.2d 141 (2nd Cir. 1983); Hymes v Harnett County Board of Education, 664 F.2d 910 (4th Cir. 1981), we believe that the holdings in these cases have been called into serious question by Smith v Robinson.....

Because proper resort to the procedural mechanisms of EAHCA is the exclusive remedy available to plaintiff, his Sec. 1983 cause of action is hereby dismissed.

C. VARIOUS 87-2823 CLAIMS:

Plainitiff's claim of "obstruction of justice", complaint No. 87-2823, Count I, "Kidknapping", Complaint No. 87-2823, Count II, and "Lack of Jurisdiction", complaint 87-2823, Count V all stem from the mistaken assumption that the institution by Virginia

Reardon of a Domestic Relations suit in State Court (Docket No. M-04123-83) improper-ly divested the district court in the earlier federal action (Civil Action No. 85-408, SIC) of its jurisdiction. this supposition is fallacious.

Although husband and wife are common parties to the state and federal proceedings, the subject matter of the two actions is distinct. In the state action, Mrs. Reardon sought to modify plaintiff's custody and visitation rights. In his federal lawsuit, plaintiff challenges the educational placement of his son. In no way does the state domestic relations action limit the Federal Court's ability to consider plaintiff's EAHCA and Sec. 1983 claims.(pgs.5,6 Ft.nt.)

Plaintiff alleges Equal Protection Clause violations in Civil Action No. 87-2823 as well. He charges defendants, particu-larly the judges in the state court system,

, with engaging in a practice of willful discrimination against fathers in custody proceedings. Plaintiff's conclusory allegations, set forth with a complete absence of supporting facts, are wholly without merit.

IV ATTORNEY FEES

Defendants seek reimbursement of their attorney fees and expenses by plaintiff pursuant to 42 U.S.C. 1988 or Rule Eleven of the Federal Rules of Civil Procedure. Accord -ing to defendants, plaintiff's claims were "frivolous, unreasonable and without foundation." Defendants Brief in Support of Motion to dismmiss, at 14. Therefore, defendants argue they are entitled to attorneys fees either under 42 U.S.C. 1988 [10] or Fed. R. Civ. Proc. 11. [11]

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[10] In Christianburg Garmet Co. v E.E.O.C., 434 U.S. 412, 422, 98 S.Ct. 694, 701, 54

There is no doubt that plainitiff is skirting the imposition of Rule 11 sanction. The assessment of Attorneys fees and expens -es against him would be wholly warranted in this case. The Legal Foundation upon

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L.Ed.2d 648 (1978),The United States Supreme Court stated that a district court may, in its discretion, award attorneys' fees to a prevailing defendant upon a finding that the plaintiffs' action 'was frivolous, unreason -able, or groundless, or that the plaintiff continued to litigate after it clearly be-came so.'
[11] Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part:".. The signature of an attorney or party consti-tutes a certificate by him that he has read the pleadings, motion or other paper; that to the best of his knowledge, information and belief formed after the reasonable in-quiry it is well grounded in fact and war-ranted by existing law or a good faith argu-ment for extension, modification or revers-al of existing law, and that it is not in-terposed for any improper purpose, such as to harrass or cause unnecessary delay or needless increase in the cost of litigation. .. If a pleading, motion, ot other paper is signed in violation of this rule, the court , upon motion or upon its own initiative, shall impose upon the person who signed it a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the

which he basis his claim is without dispute, groundless.

The Court will exercise its discretion at this time, however, and refrain from imposing sanctions against the plaintiff. This decision is of course subject to change should the plaintiff continue to engage in the pursuit of meritless litigation.

V. DISSMISSAL AS TO REMAINING DEFENDANTS ON COURT'S OWN MOTION

This court has thus far dissmissed the plaintiff's claims against Virginia Reardon, Dr. Marshall Gordon, Mary B. Mahon, Cathy Schilling, James Lombard, Michele Dayton, and the Board of Education of Collingswood for lack of subject matter jurisdiction.

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reasonable expenses incurred because of the filing of pleadings, motions, or other paper, including a reasonable attorney's fee.

Defendants Terrance Costa, The Honorable John Miller, J.S.C., Dr. Goldstein, Mr. McDonnel, Mr. Cocharin, and the Child Study of Collingswood remain.

Rule 12 (h)(3), of the Federal Rules of Civil Procedure permits the court to dismiss an action before it when it appears to the court that it lacks jurisdiction of the subject matter. Pursuant to Fed. R. Civ. Pro. 12 (h)(3), plaintiff's claims against all named defendants in Action 86-408 and 87-2823 are hereby dismissed due to lack of subject matter jurisdiction.

_____

Joseph H. Rodriguez

Dated: December 22nd, 1987

United States District Court
District of New Jersey

John E. Reardon,et al	:Hon.Joseph H.Rodriguez
Plaintiffs,	:Civil Action No.86-408
v	:
	: ORDER
Virginia Reardon, et al	:
Defednants.	:

This matter comes before the court on motion of defendants to consolidate civil ac-tions 86-408 and 87-2823; on the motions defendants to dismiss plaintiff's claims; on the motion by plaintiff to amend his com-plaint; and on the motion by defendant for attorney fees;

And for the reasons set forth in the opinion of this court filed even date;

It is on this 22nd day of December,1987 ordered as follows:

Defendants' motion to consolidate civil actions 86-408 and 87-2823 is granted;

Defendants' motion to dismiss plaintiff's claims in the above cases are granted

Plaintiff's motion to amend his complaint is denied;

The court by its own motion dismisses all remaining claims of plaintiff in the above cases in their entirety.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-5067

John E. Reardon & For John J. Reardon

vs

Virginia E. Reardon, Mr. McDonnel, Marshall Gordon, Mary Mahon, Mrs. Cathy Schilling, "John Doe", (Mr. Cocharin), James Lombard, (Special Ed. Teacher), Michelle Dayton (Special Ed. Teacher), "John Does" (Board of Ed. of Collingswood), "John Doe" (Director of the Child Study Team of Collingswood), The Collingswood School Board, and the Child Staudy Team of Collingswood

(D.C. Civil No. 86-408)

John E. Reardon, Judith A. and John J. Reardon.

vs

Virginia E. Reardon, Theodore M. Costa, John

Miller, Dr. Gordon, and Dr. Goldstein

(D.C. Civil No. 87-2823)

John Reardon,

Appellant

Appeal from the United States District Court
For The District of New Jersey.
District Judge:Honorable Joseph H. Rodriguez

Submitted

May 10, 1988

Before: Hanaaann, Hutchinson and Hunter,
Circuit Judges.

JUDGEMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the Judgement of the District Court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

Carol Los Mansmann
Circuit Judge

Attest:

Sally Divos
Sally Divos, Clerk

MAY 13 1988

COLLINGSWOOD PUBLIC SCHOOLS
COLLINGSWOOD, N.J. 08108
Edward T. McDonnel WILLIAM P. TATEM SCHOOL
Principal 854-6109

March 12, 1985

Mrs. Virginia Reardon
278 Harvard Ave.
Collingswood, N.J. 08108

Dear Mrs. Reardon:

I am writing to advise of my concern about John's apparent inability to cope emotionally with our school environment. I am aware that Mrs. Schilling has disscussed John's emotional disorientation and his inability to establish positive relationships with our children.

In the lunchroom John Taunts other children and then becomes very distraught if he is corrected, by me or the lunch aides. In the lunchroom, we are reaching the point where unless John's behavior and attitudes

toward other children improve, I may have to request that John go home for lunch each day.

In the classroom, Mrs. Schilling has re-ported to you the fact that John simply cannot control his emotional outbursts, his harrassment of other children, nor his frequent crying episodes.

As you are well aware, John's highly im-mature and distressed behavior seems to be caused by emotional factors beyond his imme-diate control. We do not believe that John is a purposefully disruptive or antagonistic child. We do believe that he needs a great deal of additional emotional and educa-tional support. For that reason I am advis-ing the school district's Child Study Team that I would like to speak to them about John as soon as possible.

If there is any way that I can assist

you or your family in working with John, please fell free to contact me. In the meantime, I will keep you informed of our progress with John at school.

Thank you for your attention.

Sincerely,

Edward T. McDonnell,
Principal

ETM/mc
cc:Child Study Team
Mrs. Schilling
cc:Mr. Reardon12/13/85

COLLINGSWOOD PUBLIC SCHOOL
COLLINGSWOOD, N.J. 08108
Edward T. McDonnel WILLIAM P. TATEM SCHOOL
Principal 854-6109

April 17, 1984

Mr. John Reardon
2219 Brighton Ave.
Lindenwold, N.J. 08021

Dear Mr. Reardon

As per your request, I am writing to ad-vise you of our current opinion relative to John's 1984-85 placement.

John demostrates sufficient knowledge of second grade mathmatics and reading to be assigned to grade 3 in 1984-85. We have serious concerns about John's emotional state. My observations, and his first and second grade teachers' observations are that John regresses dramatically in the face of any kind of pressure. When school work be-comes difficult for him he puts his head

down, puts his fingers into his mouth, and is unable-or unwilling-to speak. John responds in the same manner when confronted about other matters.

For example, last week I had to speak to John about failing to complete his homework. When I spoke to him he put his chin on his chest, looked at the floor and put his fingers into his mouth.

At this point, we are attempting to form an opinion as to wether John's emotional reactions would be more of a problem for him in third grade than in second grade. In the next several weeks we plan to contact you and John's mother to make a joint decision about 1984-85 placement of John.

Sincerely,
Edward T. McDonnel
Pricipal

ETM/mc
cc: W. C. Ande, Superintendent
Mrs. Virginia Reardon
Mrs. Lauletta
Mrs. Silverman

Affidavit

The undersigned parties due hereby attest and affirm the following facts took place on Tuesday morning July 14, 1987 at the Camden Co. Hall of Justice relating to the matter of Reardon v Reardon.

A) The Judge did prevent the petitioner--John E. Reardon--from making an appearance on the record.

B) The petitioner was denied by the Judge to place an opening objection on the record regarding the proceedings and self incrimination in a criminal proceeding.

C) The criminal proceeding was domestic violence and the Judge did require the petitioner to be sworn in and denied him his right to plead the 5th.

D) Prior to the hearing, Mrs. Reardon, her counsel, and her brother-in-law

came from the Judge's chambers area.

E) During the hearing and questioning, on at least two occassions, Mrs. Reardon did look to the Judge as though looking for guidance or an answer and the Judge did make a hand gesture that was slight but noticable.

F) The Judge refused to hear the petitioners statements that the court lack-ed jurisdiction due to the cases of Doran, Hicks, and Younger which prevents two forums from addressing the same issues and allegations.

G) When this was brought to the courts attention the court responded by saying that "HE DIDN'T CARE WHAT WAS GOING ON IN THE OTHER CASES", or something to that effect.

H) The court did require the petitioner to testify against himself in a crimin

-al proceeding without counsel.

I) The petitioner did inform the court he was unaware of the specific nature of the action and what he was supposed to be defending himself against.

J) The Judge never asked the petitioner if he had counsel, could afford counsel or even wanted counsel.

K) The Judge refused to permit the peti-tioner from challenging the merits of the plaintiffs allegations and when he did he remarked they had no bearing on the case.

L) The court did proceed in a fashion which required and requires the peti-tioner to prove the states and Mrs. Reardon's charges for them.

M) Despite testimony from the plaintiff --Mrs. Reardon---herself that at no time in the past five years had the pe-

titioner ever acted in a fashion that she was alleginig, nor had she ever had occassion to file a domestic violence complaint or complaint with the Division of Youth and Family Services, the court still accepted Mrs. Reardon's allegations as truth and entered an or-der depriving the plaintiff of his rights to custody and the love, affection, company and companionship of his children.

N) The Judge refused to permit the peti-tioner to rely on the defenses of estoppel and collateral estoppel which bars a party from re-litigating issues and facts that have been litigated in the past and found insufficient proof to warrant such action as the court took on July 14, 1987.

O) The Judge did further permit the

plaintiff to make allegations that the petitioners pending complaints are in fact frivolous, meritless, and specious , but more importantly the reliance on said allegations was to try and make petitioner look psychotic because he be -lieves in fighting for and protecting his rights.

We the undersigned due hereby make these statements under oath and penalty of perjury and realize that these are our obser -vations of what was taking place.

Dated: 7/16/87 By:_____
John E. Reardon

Francis Brennan-Notary Public

My Comm. Expires: 8/13/90

By:_____
John DeFerro

UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF NEW JERSEY,
CAMDEN, NEW JERSEY, 08101.

John E. Reardon,et al)

Plaintiffs,)Civil Action No.86-408

VS)

Virginia Reardon,et al)

Defendants.)
---)

Decision on motion for a Temporary restraining order and order to show cause why preliminary injunctive re-lief should not be mandated against defendants.

Before: The Honorable Stanley S. Brotman, Judge, United States District Court, District of New Jersey, Camden, New Jersey, 08101.

Date: August 21, 1986

Time: 9:30 A.M.

****

The Court also notes that it has serious doubts about Mr. Reardon's standing to bring this EAHCA action in the first place. Under the New Jersey regulations, a "Parent" in a situation where the parents are seperated or divorced is defined as the "Person who has legal custody of the Pupil." N.J.A.C. 6:28-1.3. Because Mrs. Virginia Reardon and not John E. Reardon is the child's only Legal custodial Parent, it is therefore unclear that the school district has any legal obligation to include Mr. Reardon in its administrative process at all. Because Mr. Reardon has chosen not to attempt exhaustion of his administrative remedies, the court need not reach that issue now. But the court raises the question for the purpose of indicating the further unlikelihood of Mr. Reardon's eventual prevailing on the merits. As the above analysis indicates, plain

-tiff has clearly not demonstrated any real probability of success on the merits of his claim.

Superior Court of New Jersey
Camden County,Camden,New Jersey

Virginia Reardon)

Plaintiff,) Case No. M-04123-83

vs)

John Reardon) Transcripts from Divorce Proceedings of 1984.

Defendant.)

MR. KLEIN: Alright. In addition, your Honor, the Court made no comment with regard to issues of the children's education and consultation with regard to health matters, which I consider to be important. Is it the Court's ruling and determination that those matters are unilaterally within the discretion of the custodial parent, or should there be consultation?

THE COURT: I think that full access in respect to school records and reports should be given to non-custodial parents, that major issues of education should be discuss-

ed. However, it is for the custodial parent to set down the basic patterns of education. Specifically there should be some discussion, but the appropriate scheduling of events, for example, wether or not he plays Athletic events or joins clubs are for custo-dial parents to decide. Whether or not they go to religious education has been held to be a primary function of custodial parent, although certainly the other party should be made aware of it and every effort should be made to discuss it with them so that they would be supportive. I don't think we have any kind of difference in religion or anything like that, so that's primarily not involved in this case.

MR. KLEIN: Do I understand, your Honor, that aside from access to school records that Mr. Reardon should also have access to medical records of the children?

not involved in this case.

MR. KLEIN: Do I understand, your Honor, that aside from access to school records that Mr. Reardon should also have access to medical records of the children?

THE COURT: Yes, he should always have full access to medical records.

FINAL JUDGEMENT OF DIVORCE

CASE NO. M-04123-83

It is on this 23rd day of July, 1984, Ordered and Adjudged that pursuant to the statutes in such cases made and provided, the marriage between the parties is dissolved; and.....

It is Further Ordered and Adjudged as Follows:

As To the Unemancipated Children.....

1. Defendant shall at all times be advised of all significant aspects relating to the children's schooling and medical condition and will, at all times, have full access to school and medical records. Additionally, plaintiff shall at all times, discuss all major decisions relating to the children with defendant.

COLLINGSWOOD PUBLIC SCHOOLS
COLLINGSWOOD, N.J. 08108
Edward T. McDonnel WILLIAM P. TATEM SCHOOL
Principal 854-6109

April 30, 1984

Mr. John Reardon
2219 Brighton Av.
Lindenwold, N.J. 08021

Dear Mr. Reardon

I have received your letter dated April 26, 1984. I have tried to accomodate you by meeting with you and your mother and by offering to meet with you whenever there is a concern. In addition, because you requested it, I sent you a letter on April 17,1984 outlining John's progress in first grade and in second grade math and reading classes. Even though I had already explained all of that information verbally, I also placed it in a letter because you seemed to have some need to have the information in writing. However, today I received a letter from

you indicating that my letter was not thorough enough.

Our procedure for communicating with parents is through teacher/parent conferences. These conferences may be arranged any time by calling the school at 854-6109. If you would like to discuss the specific incidents you refer to in your letter, you will have to discuss them with the teachers who witnessed them. This may be done in person or over the telephone. I will be glad to attend any of these conferences.

I believe I have demonstrated my interest in providing John with the best and most appropriate education possible. That is why he is spending time in both first and second grade-so that we may determine the best educational seting for 1984-85. However , my responsibility does not include letter writing at your direction.

John's teachers and I will continue to exert our efforts on John's behalf.

Sincerely,

Edward T. mcDonnel
Principal

ETM/mc
cc: Walter C. Ande. Superindent of Schools
Mrs. Lauletta
Mrs. Silverman

COLLINGSWOOD PUBLIC SCHOOLS
COLLINGSWOOD, N.J. 08108
Edward T. McDonnel WILLIAM P. TATEM SCHOOL
Principal 854-6109

November 16, 1984

Mr. John E. Reardon
8 Winding Way
Gibbsboro, N.J. 08026

Dear Mr. Reardon:

I am writing in response to your letter addressed to Mrs. Schilling and dated November 11, 1984. I have advised Mrs. Schilling that I would respond to your letter.

While I am very pleased that you and John's mother both attend the conference with Mrs. Schilling on November 7th, I am very concerned about the contents of your letter.

As you can understand, we certainly do not wish to become involved in family contro-versies between you and John's mother.

Your letter and list of discussion items which you want "verified" appears to be an attempt to document only negative aspects of John's situation. John's situation is certainly not all negative, nor are our conferences designed to build a case against one parent or another. If you wish to keep your own notes on your parent conferences, you are most welcome to do so, but we do not wish to become involved in documentation of your notes.

Thank you for your unuderstanding in this matter.

Sincerely,

ETM/mc
cc:Mrs. Schilling

Edward T. McDonnel,
Principal

1) Art. III:

A) Sec. 1: The Judicial Power of the United States, shall be vested in one supreme Court, and such inferior Courts as the Congress may from time to time ordain and establish.....

B) Sec. 2: The judicial Power shall ex -tend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,....or which shall be made, under their Authority.

2) Art. IV:

A) Sec. 1: Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws, prescribe the Manner in which such Acts, Records and

Proceedings shall be proved, and the effect thereof.

B) Sec. 2: The citizens of each State shall be entitled to all Priviledges and Immunities of Citizens in the Several States.

C) Sec. 4: The United States shall guar-entee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion;....

3) Art. VI:

A) Par. 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;..... under Authority of the United States, shall be the Supr e Law of the Land;

and the Judges in every State shall be bound thereby; anything in the Constitution or Laws of the State to the Con -trary notwithstanding.

B) The.....judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.

4) U.S. Const. Amend. IX:The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

5) U.S. Const. Amend. X: The powers not del -egated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States

respectively, or to the people.

6) U.S. Const. Amend. XIV: All persons born or Naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the priviledges or immunities of the citizens of the Unit -ed States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

7) 28 U.S.C. 1331 (a): The district court shall have orignial jurisdiction of all civil actions wherein the matter in con -troversy exceeds the sum or value of

$10,000.00, exclusive of interest and costs,and arisee under the Constitution , laws, or treaties of the United States.

8) 28 U.S.C. 1343: The district courts shall have original jurisdiction of any civil action authorized by law to be commenc -ed by any person:

A) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, priviledge or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.;

B) To recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

9) 42 U.S.C. 1983: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subject-ed, any citizen of the United States or other person within its jurisdiction thereof to the deprivation of any rights, priviledges, or immunities secured by the Constitution, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.....

10) 42 U.S.C. 1985:

A) Sec. 2: If two or more persons conspire for the purpose of impeding, hind-ering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protec-tions of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

B) Sec. 3: If two or more persons in any State or Territory conspire....for the purpose of depriving, either direct-ly or indirectly, any person or class of persons of the equal protection of the laws, or of equal priviledges and immunities under the laws;.....in any

case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in the furtherance of the object of such conspiracy, whereby another is in -jured in his person or property, or deprived of having and exercising any right or priviledge of a citizen of the United States, the party so injured or deprived may have an action for the re -covery of damages occassioned by such injury or deprivation, against any one or more of the conspirators.

11) 34 C.F.R. 300:

i) .10: As used in this part, the term "parent" means a parent, a guardian , a person acting as a parent of a child or a surrogate parent who has been appointed in accordance with sec. 300.

514. The term does not include the State if the child is a ward of the state.
Comment: the term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or step-parent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

ii) .345: (a) Each public agency shall take steps to insure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate , including:

(1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutual -ly agreed time and place.

(b) The notice under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the public agency shall use other methods to insure parent participation, including individual or conference calls.

(d) A meeting may be conducted without a parent in attendance if the public agen -cy is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) detailed records of telephone calls made or attempted and the results of those calls.

(2) Copies of correspondence sent to the parents and any responses received, and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The public agency shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The public agency shall give the parent, on request, a copy of the individualized education program.

iii) .500; Consent: (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the acti -vity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and

(c) The parent understands that the granting of consent is voluntary on the

part of the parent and may be revoked at any time.

iv) .504(a) Notice: Written notice which meets the requirements under sec. 300. 505 must be given the parents of a handi -capped child a reasonable time before the public agency:(see page 40-44 of this appendix.)

(1) Proposes to initiate or change the identification, evaluation, or education -al placement of the child or the provi- sions of a free appropriate public edu- cation to the child,

(2) (b) Consent:(1) parental consent must be obtained before:

(i) Conducting a preplacement evalu

-ation; and

(ii) Initial placement of a handicapped child in a program providing special education and related services.

COMMENT. Any change in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the individualized education program requirements in Subpart C.

v) .505 Content of Notice: (a) The notice under Sec. 300.504 must include: (see page 40-44 of appendix)

(1) A full explanation of all the pro

-cedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The Notice must be:

(1) written in the language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasable to do so.

12) N.J.A.C. 1:6A-1.1

(b) These rules are established in impli-mentation of Federal Law,at 20 U.S.C.A. 1514 et seq. and 34 C.F.R. 300 et seq. These rules do not duplicate each provi-sion of Federal Law, but highlight some of the key Federal Provisions which form the source or authority for these rules Where appropriate, the Federal source or authority for a rule or Federal Elabora

-tion of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, The Federal requirements shall apply.

(c) Since these rules are established in implimentation of Federal Law, they may not be relaxed except as specifically provided herein or pursuant to Federal Law.

13) N.J.A.C. 6:28:

i) -1.3:"Parent(s)" means the natural parents; or legal guardian(s),....Where the parents are seperated or divorced, parent means the person(s) who has legal custody of the pupil.(compare to finding of Judge Rodrigues at page 2,3 & 53-56 of this appendix.)

ii) -2.7 (a): The parent(s) may request a hearing after receiving a written notice of proposed or denied action or 30 calender days have elapsed from the date the parent(s) written request for an ac -tion under this chapter. The district board of education, through its chief school administrator, may request a hear -ing when it is unable to obtain requir -ed parental consent to a proposed action.(Procedural Due Process Hearing.)

iii) -2.8 (a) Educationally handicapped pupils are subject to the same disciplin -ary procedures as nonhandicapped pupils ; however:

1) No educationally handicapped pupil may be disciplined if the pupil's behavior is primarily caused

by his or her educational handicap; or (see apndx. @ 170-190)

2) No educationally handicapped pupil may be disciplined if the program that is being provided does not meet the pupil's educational needs.

iv) -2.9 (a): All pupil records shall be maintained according to N.J.A.C. 6:3-2. (b) The parent(s) or adult pupil shall be permitted to review and appeal the contents of the pupil's education records maintained by the district board of education under this chapter.(note: N.J.A.C. 6:3-2.1 defines parent exactly as N.J.A.C. 6:28-1.3, compare to app. pgs.2,3,45-49,53-56,132-136 & 190-206.)

14) N.J.S.A. 52:14f-1: There is established

in the Executive Branch of the State Government the Office of Administrative Law. For the purpose of complying with the provisions of Art. V, Sec. IV, par. 1 of the New Jersey Constitution, the Office of Administrative Law is hereby allocated within the Department of State, but notwithstanding said allocation, the office shall be independant of any supervision or control by the department or by any personnel thereof. As used in this act, "office" shall mean the Office of Administrative Law.

15) N.J.S.A. 6:24-1.1 et seq.:

A) Definitions: "OAL" means the Office of Administrative Law.

B) -1.2 (a): To initiate a contested case for the commissioner's determination of a controversy or dispute arising

under the school laws, a petitioner shall serve a copy of a petition upon each respondent. The petitioner then shall file proof of service and the original of the petition with the commissioner c/o the Director of the Bureau of Controversies and Disputes, New Jersey Department of Education, 225 West State St., CN 500, Trenton, New Jersey 08625.

(b) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education which is subject of the requested contested hearing.

16) N.J.S.A. 18A:46 et seq:

A) -1: As used in this chapter a handicapped child shall mean and include any

child who is.....emotionally disturbed.....

B) -2: the commissioner shall be respon-sible for the coordination of the work of the county departments of child study and the general administration of special educational services in the public schools of this state.

C) -5: Each county child study team shall function in consultation with the local boards of education in the county or the local boards of education in the counties served by it in the field pertaining to:

a. Identification and diagnosis of children needing special education services,

b. developement and approval of public school programs for handicapped pupils,

c. supervision and coordination of public school programs for handicapped pupils,

d. reporting and referral of children with handicapps, of such severity as to indicate the necessity of residential placement, medical or psychological treatment, or care, to the appropriate agency for such purposes,

e. social cases and psychological evaluations,

f. remedial instruction,

g. cooperative action with the state and county departments and lay professional organizations, and

h. additional responsibilities as determined by the commissioner with the approval of the state board.

D) -6: Each board of education shall identify and ascertain, according to rules prescribed by the commissioner with the approval of the state board, what children between the ages of 5 and 20 in the public schools of the district , if any, cannot be properly accomodated through the school district facilities usually provided because of handicaps.

E) -7: Each board of education shall report annually to the county superintend

-ent of schools of the county in which the school district is situate,who shall report to the commissioner, the names of all children who are in special education instructional programs and the names and addressees of their parents or persons having control or custody of them, together with the category into which they have been calssified.....

F) -8: Each handicapped child shall be identified, EXAMINED and classified according to procedures, prescribed by the commissioner and approved by the state board, under one of the following categories:.....emotionally disturbed.

17) N.J.S.A. 2C:25-1 et seq:

A) -12: A VICTIM may file a complaint alleging the commission of an act of do

mestic violence with the juvinile and Do -mestic relations court in conformity with the rules of court. The court in do -mestic violence actions shall not dismiss any complaint or delay disposition of a case because the VICTIM has left the residence to avoid further incidents of domestic violence. Filing a complaint pursuant to this section shall not pre -vent the filing a criiminal complaint for the same act.

B) -13 (a): A hearing SHALL be held in juvinile and domestic relations court within 10 days of the filing of a complaint pursuant to section 12 of this act.....

C) (c): In addition to the relief sought in subsection b. of this section a plain

-tiff may seek emergency, ex parte relief in the nature of a temporary restraining order. The Juvinile and domest-ic relations court may enter ex parte orders when necessary to protect the life, health and well-being of a VICTIM on whose behalf the relief is sought. A hearing SHALL be held on an ex parte or-der within 10 days of the issuance thereof.

D) -14 (c): An order for emergency relief shall be granted upon good cause shown and shall remain in effect until the juvinile and domestic relations court issues a final order. The juvinile and domestic relations court SHALL hold a hearing on an emergency order within 10 days. Any order hereunder may be dissolved or modified on 24 hours notice

or immediately appealable for a plenary hearing de novo not on the record before the juvinile and domestic relations court of the county in which the plaintiff resides.

NOTE: compare the above to pages 137-139 of this appendix.

18) 28 U.S.C. 1738: The Acts of the legisla-ture of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affix-ing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its

Territories and Possessions by attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenti-cated, shall have the same FULL FAITH and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

19) 20 U.S.C. 1415:

A) (a): Any State educational agency, any local educational agency, and any intermediate educational unit which receives assistance under this subchapter shall establish and maintain procedures

in accordance with subsection (b) through subsection (e) of this section to assure that handicapped children and their parents or guardians are guaranteed procedural safeguards with respect to the provisions of free appropriate public education by such agencies and units.

B) (b)(1): The procedures required by this section shall include, but shall not be limited to-

(A) an opportunity for the parents or guardian of a handicapped child to examine all relevant records with respect to the identification, evaluation , and educational placement of the child , and the provisions of a free appropriate public educatin to such child,and

to obtain an independent educational evaluation of the child;

(C) written prior notice to the par-ents or guardian of the child whenever such agency or unit-

(i) proposes to initiate or change, or...

(D) procedures designed to assure that the notice required by clause (C) fully informs the parents or guardian, in the parent's or guardian's native language, unless it clearly is not feasible to do so, of all procedures avail-able pursuant to this section; and

(E) an opportunity to present complaints with respect to any matter relating to the indentification, evalua-

tion, or educational placement of the child, or the provision of a free appro-priate public education to such child.

C) (b)(2): Whenever a complaint has been received under paragraph (1) of this sub-section, the parents or guardian shall have an opportunity for an impartial due process hearing which shall be conducted by the State Educational agency or by the local educational agency or intermediate educational unit, as determined by State law or by the State educational agency. No hearing conducted pursuant to the requirements of this paragraph shall be conducted by an employee of such agency or unit involved in the education or care of the child.

D) (c) If the hearing required in para-

graph (2) of subsection (b) of this sec -tion is conducted by a local education -al agency or an intermediate education -al unit, any PARTY agrieved by the find -ings and decision rendered in such a hearing may appeal to the state educa- tional agency which shall conduct an im -partial review of such hearing. The officer conducting such review shall make an independent decision upon comple -tion of such review.

E) (c)(2): Any PARTY aggrieved by the findings and decisions made under subsec -tion (b) of this section who does not have the right to appeal under subsec- tion (c) of this section, and any PARTY aggrieved by the findings and decision under section (c) of this section, shall have the right to bring a civil action

with respect to the complaint presented pursuant to this section, which action may be brought in any State court of com -petent jurisdiction or in a district court of the United States without re- gard to the amount in controversy. In any action brought under this paragraph the court shall receive the records of the administrative proceedings, shall hear aditional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant relief as the court determines is appropriate.

20) Declaration of Independence: We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain un -alienable Rights, that among these are

Life, Liberty and the pursuit of Happi-
ness. That to secure these rights, Gov-
ernments are instituted among Men, deriv
-ing their JUST powers from the CONSENT
of the governed.

...The history of the present King of
Great Britain is a history of repeated
injuries and usurpations, all having in
direct object the establishment of abso
-lute Tyranny over these States. To
prove this, let Facts submitted to a can
-did world.

> He refuses to Assent to Laws, the
> most wholesome and necessary for the
> public good.(State Court Judge Mill
> -er, refused to comply with state
> law requirements,Marbury v Madison)

He has obstructed the Administration

of justice, by refusing his assent to Laws....(Judge Miller & Federal court judges who accept evidence not in compliance with federal law and rely on such invalid evidence, or allowing and relying on personal correspondence to the court by oppos -ing counsel when the other party is pro se, or the courts refusing to comply with the legal criteria set by this court.)

He has made judges dependent on his will alone, for the tenure of their office, and the amount and payment of their salaries.(the governments and courts have made attorney's sub -ject to the judge's will and any such conduct not consistant with the individual judge's will is met by

injury by the judge against the objecting attorney and thus the judge indirectly establishes the amount of income the attorney's will make because they can disbar an attorney practically at will. But more imprtantly, by allowing attorney's the SPECIAL PRIVILEDGE of legal representation, and attorney's being a title,according to Bouvier's law dictionary under NOBILITY and TITLE, refusal to allow one individual to represent another--Farretta v Ca., 422 U.S. 807,820--would be a grant of a TITLE OF NOBILITY by Statute, not permissable by Art. 1, Sec.s 9 & 10.)

For protecting them, by mock Trial, from punishment for any...

[wrongs] ....they should commit on the inhabitants of these States.

For depriving us in many cases, the benefits of Trial by Jury.

In every stage of these oppressions We have Petitioned for Redress in the most humblest of terms: Our repeated petitions have been answer-ed only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be ruler of a free People.

And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other

our lives, our Fortunes and our sacred Honor.

21) A) 121 Cong. Rec.:

i) @25531: Mr. Quie; At the time the gentleman from Florida (Mr. Lehman) had a concern that there might be a tendency to include too many children as specific learning disabilities children and there-by deny an opportunity to some of the other handicapped children.

ii) @37410: Mr. Randolph; In recognition of the vital importance of trained personnel to impliment the provisions of this legislation, both the state and local jurisdictions will have certain responsibilities in developing, implimenting, and maintaining a comprehensive system of personnel developement.

Another important feature of this legislation concerns the expansion of due process procedures in existing law. By building on those safeguards of due process in Public Law 93-380, we will assure handicapped children and their parents or guardian the right to have written prior notice whenever the educa -tional agency plans to initiate, change -or refuses to change or initiate-the identification, evaluation, or education -al placement of the child or the provi -sions of a free appropriate public edu -cation to the child; the right to exa- mine relevant records; the right to have an opportunity to present com- plaints; and the right to have an impar -tial due process hearing.(app.@21 & 22)

It also calls for the developement of and individualized educational pro-

gram for each handicapped child, in which there is participation by the parents or guardian of the child, the teach -er, a representative of the local educa -tional agency qualified to provide or supervise the provision of special education and related services, and the child when appropriate. Individualized attention to educational needs has and will continue to be one of the most important elements to a child's success in school. By monitoring a child's progress , a teacher can aid the child in achiev -ing educational goals as well as deter -mining where a potential educational problem may arise.

iii) @37411: Mr. Randolph; This is the day that handicapped children and their parents can point to and say that this

Congress--their Congress--recognized as a matter of national policy, the equal protection under the law that they have allways deserved.

Those children have hopes and dreams and desires to achieve some measure, just as do their normal peers. They should not have to go to court--as they have had to do in 27 States--to assure for themselves something that for everyone else is part of the pattern, the rhythm , the assumptions of everyday life.

iv) @37416: Mr. Williams; Mr. President, with regard to complaints, I want to un -derscore that exhaustion of the administrative procedures established under this part should not be required for any individual complainant filing a judicial action in cases where such exhaustion

would be futile either as a legal or practical matter. Nor is it intended that the availability of these administrative procedures be construed so as to require each member of the class to exhaust such procedures in any class ac-tion brought to redress an alleged vio-lation of the statutes.

v) 037417: Mr. Schweiker; Parents of handicapped children all too frequently are not able to advocate the rights of their children because they have been erroneously led to believe that their children will not be able to lead meaningful lives. However, over the past few years, parents of handicapped children have begun to recognize that their children are being denied services guar-enteed under the Constitution.It should

not, however, be necessary for parents throughout the country to continue util -izing the courts to assure a remedy. The Congress must take a more active role under its responsibility for equal protection of the laws to guarentee that handicapped children are provided equal educational opportunity. It can no long -er be the policy of government to mere -ly establish an unenforceable goal re- quiring all children to be in school. S 6 takes positive necessary steps to in- sure that the rights of children and their families are protected.

B) P1 94-142:

i) @1434 & 1435: The committee bill de- fines "individualized planning confer- ence" as a meeting or meetings to be

held at least three times a year for the purpose of developing, reviewing, and when appropriate and within the agreement of the parents or guardian, revising a written statement of appropriate educational services to be provided for each handicapped child. The planning conferences shall be conducted with the joint participation of the par-ents or guardian, the child (when appro-priate), the child's teacher and a representative of the local educational agency who is qualified to provide or supervise the provisions of special edu-cation.

There is evidence that an individualized planning conference on an annual basis is insufficient....

....The Committee has included a requirement that any revision of the

statement be done only with the agree-
ment of the parents or guardian in order
to ensure that services to the child are
not arbitrarily curtailed or modified.

ii) @1453: The Committee is alarmed
about the abuses which occur in the test
-ing and evaluation of children, and is
concerned with that expertise in the
proper use of testing and evaluation pro
-cedures falls far short of the prolific
use and developement of testing and eval
-uation tools.....(apndx. @ 125-136.)

iii) @1465:...(C) the specific education
-al services to be provided to the handi
-capped child and the extent to which
such child is to be integrated into regu
-lar classroom and school program of non
handicapped children.....

iv) @1470: ...requires that as part of The conferences to be held at least three times each year the written state -ment developed for the handicapped child must be reviewed, and when appro- priate, revised,.....with the agreement of the parents or guardian of the child .(The remaining wording refers to the due process/procedural safeguards for parents and children.)

v) @ 1500: Requirements for Due Process Procedures.

The Senate bill re-enacts the provi- sions of existing law relating to proce -dural safeguards for handicapped child -ren and parents and guardians of handi -capped children, requires their estab -lishment as a condition of State eligi -bility under this part and makes the

following changes of these provisions:

(1) parents or guardians will be pro -vided prior notice when the State or lo -cal educational agency proposes to IN -ITIATE the educational placements of the child.

(2) the impartial due process hearing will not be conducted by an employee of the State or local educational agency directly inivolved in the education or care of the child; and

(3) material and procedures shall be provided and administered in the child's primary home language or mode of commun -ication and that no single procedure shall be the sole criterion for determin -ing and appropriate educational place -ment for a child.

The House bill retains the provisions of existing law relating to procedural safe-

guards as part of the State plan and adds the following:

(1) Any local educational agency receiving assistance under this part shall establish a grievance procedure that will offer an opportunity for handicapped children and their parents or guardian to present complaints with respect to the manner in which the handicapped child involved is receiving special educational and related services;

(2) Upon receipt of a complaint, the local educational agency shall conduct an investigation, and upon completion of such investigation, transmit a report (including a description of any recommendation or disposition made) to the State educational agency;

(3) The State educational agency, upon appeal by an aggrieved party or on

its own motion shall review the action of the local agency and conduct an investigation of the factual circumstances relating to the complaint,attempts to re-solve the matter (by informal methods), and, upon a finding (after reasonable notice and opportunity for hearing) that a local educaional agency has failed to comply with any provision of this part, shall take whatever steps necessary to correct such failure;

(4) Any person participating in a hearing conducted by a local educational agency and the State educational agency shall have the right to be accompanied and advised by counsel and by individuals with special knowledge or training and skills with respect to handicapped children;

(5) The State educational agency

shall take its findings and determinations into account during its review of any application for funds under this part made by the local educational agen-cy involved and shall submit a report of its findings and determinations (and a description of any action taken there-on) regarding any complaint to the Com-missioner of Education; and

(6) Actions may be brought in the dis-trict courts of the United States to appeal the determinations of the State educational agency and in such actions the findings of fact of the State educa-tional agency be conclusive if support-ed by substantial evidence and the dis-trict courts may remand the case to the State agency to take additional evi-dence.

The following conference substitue is

adopted in order to clarify and strngthen the procedural safeguards in existing law;

(1) All of the procedural safeguards are established as a condition of a State's eligibility to receive funds un -der this part;

(2) The provisions of existing law are retained with respect to the establishment of procedures to insure that handicapped children are educated with children who are not handicapped;

(3) The provisions of existing law are retained with respect to the establishment of procedures to insure non-discrinminatory testing and evaluation procedures and language is added (from the Senate bill) which provides that materials and procedures shall be provid -ed and administered in the child's na -tive language or mode of communication

(unless it is clearly not feasible to do so) and that no single procedure shall be the sole criterion for determining an appropriate educational placement for a child;

(4) The provisions of existing law are retained with respect to the establishment of procedures providing parents or guardians the opportunity to examine all relevant records with respect to the identification, evaluation, and education -al placement of the child and language is adopted to clarify that the parents or guardian shall be able to examine any records relating to the provisions of a free appropriate public education (as that term is defined in the Act) to the child. The provisions of existing law with respect to an opportunity for an in

-dependent educational evaluation of the child are also retained;

(5) The provisions of existing law are retained with respect to the establishment of procedures to protect the rights of the child when the parents are unknown, unavailable, or the child is a ward of the State, including the appoint-ment of a surrogate for the parents or guardian;

(6) The provisions of existing law are retained with respect to requiring prior notice to the parents or guardian. Language is adopted to clarify that such notice shall be in writing. Such notice shall be provided to the parent or guardian whenever the local educational agency or the State educational agency (when

the State agency acts as a provider of direct educational services to the child) PROPOSES to initiate or make a change in the identification, evaluation, or edu -cational placement of the child or to initiate or change the free appropriate public education (as that term is defined in the Act) provided or available to such child, or REFUSES to undertake such action (such as the denial of special edu -cation and related services to a child). In addition,language is adopted to assure that any such notice shall, to the max-imum extent feasible, be in the parents' or guardian's native language (as the term is defined in title VII of the Ele-mentary and Secondary Education Act of 1965) and shall include a full explana-tion of the procedural safeguards avail-able to the parents or guardian under the

Act;

(7) The provisions of existing law are clarified and strengthened with respect to impartial due process hearings and language is adopted to assure that:

(a) any parent or guardian may present a complaint concerning any matter regarding the identification, evaluation, or educational placement of the child or the provisions of a free appro-priate public education to such child.

(b)whenever a complaint is received, the parents or guardian shall be afford-ed an opportunity for an impartial due process hearing, which hearing shall be conducted by the local educational agency or State educational agency. The conferees do not intend

that this provision will require changes in existing arrangements where due process hearings are conducted at the local level. The only requirement with respect to the level of which such such hearings are conducted occurs when the hearings is conducted at the local level. The only requirement with respect to the level of which such hear -ings is conducted at the local level and in such cases, there is a review re -quired at the State agency level. In addition, the conferees point out that any hearings are not conducted by the agency itself, but rather at the appro -priate agency level. The hearing will be conducted by an impartial hearing officer since the State or local agency or intermediate unit will be a party to any complaint presented.

(c) no hearing may be conducted by an employee of the State or local educational agency involved in the education or care of the child. The conferees have adopted this language to clarify the minimum standard of impartiality which shall apply to individuals conducting due process hearings and individuals conducting a review of the local due process hearing;

(d) in the event that the impartial due process hearing is conducted by a local educational agency, any party to such hearing who is aggrieved by the findings and decision rendered in such hearing may appeal to the State educational agency and the State agency shall conduct an impartial review of the hearing and the individual conducting this review shall make an independ

-ant decision. The conferees expect that where due process hearings are con-ducted by the State educational agency or in cases where review of local edu-cational agency hearings is made by the State educational agency, such pro-ceedings will be conducted at a time and place which is reasonable convenient to the parents or guardian of the child involved.

(e) any party to any hearing conduct-ed by the State or local educational agency and any party to any hearing con-ducted by the State educational agency as part of an impartial review of a hearing conducted by a local educa-tional agency in that State shall be accorded (1) the right to counsel and to be advised and accompanied by indi-viduals with special knowledge, train-

ing or skills with respect to the prob
-lems of handicapped children, (2) the
right to present evidence and confront
cross-examine, and compel attendance of
witnesses, (3) the right to have writt
-en or electronic verbatim record of
such hearing, and (4) the right to have
written findings of fact and decisions.
The conferees adopt this language to re
-inforce rights allready required by
the Commissioner of Education pursuant
to existing law. Further, it should be
emphasized that these rights shall also
apply in State reviews of local agency
hearings where the reviewing officer
determines that a hearing should be con
-ducted for purposes of taking new
additional evidence.

(8) The provisions of existing law

with respect to the binding effect of due process hearings and appropriate administrative and judicial review of such hearings are clarified and language is al -so adopted to require that during the pendency of any administrative or judicial proceedings regarding a complaint, unless the State or local educational agency and the parents or guardian of the child otherwise agree, the child involv -ed in the complaint shall remain in his or her present educational placement, or, if the complaint involves an application for initial admission to public school the child shall, with the consent of the parents or guardian be placed in the pub -lic school program until the completion of all proceedings.

(9) The provisions of existing law

with respect to judicial action are clari
-fied and strengthened to assure that
any party aggrieved by the findings and
decision rendered in the due process hear
-ing or the State educational agency re
-view of such hearing shall have the
right to bring a Civil action with re-
spect to the original complaint and matt
-ers relating thereto. Such action may be
brought in any State court of competent
jurisdiction or in a district court of
the United States and in any such action
the court shall receive the records of
the due process hearinh (and where appro
-priate the records of the review of such
hearing), shall hear additional evidence
at the request of any party, shall make
an independent decision based on a pre-
ponderance of the evidence and shall
grant all appropriate relief. A technical

clarification is also made assuring that the district courts of the United States have jurisdiction of actions brought pur-suant to these provisions without regard to the amount in controversy.

COLLINGSWOOD PUBLIC SCHOOLS

COLLINGSWOOD, N.J.

LEARNING DISSABILITY ASSESSMENT

Name: John Reardon D.O.E.: 4/29/85

school:Tatem D.O.B.: 8/31/76

Grade: 3 C.A.: 8-8 Sex: M

Address:278 Harvard Av. Ex.:Mary Mahon,LDTC

Parent:Vriginia Reardon Ref. by:Cathy Schilling, Teacher, Ed McDonnel, Principal

Reasons for Referal

"Severe emotional problems.Cries daily which is a nuisance to the rest of the class. Seems to be socially maladjusted."

Background Information and Description

John has a history of behavioral problems. While attending Mount Carmel School, John was evaluated and classified E.D. by the Non-Public Child Study Team in 1983. [Comment:

this was during a period of time when the child was under the mothers influence and care.] He later transferred to the Lindenwold Public School district where he was not classified but did receive speech correction services. [comment: the child was now under the direct care and influence of the petitioner, the father, the psychological parent of the child.] The records indicate that John did not appear to have learning or perceptual problems. John has recently transferred to the Collingswood School System. He attends the third grade at the Tatem School. John, a healthy looking child, came willingly to the testing session. As we were walking down the hall, he started to laugh inappropriately. During the testing session, he was attentive and worked diligently. However, several times when he perceived that he was not doing well, particu-

larly when listening was involved, his eyes filled with tears and his lip trembled. John does not know what he wants to be when he finishes school. He said there are a lot of choices and he wouldn't know at this time. He is interested in sports and he enjoys reading.

Tests Administered [Note: No knew psychiatric/psychological was Given. How did they reach conclusion of E.D. unless by rejected reports cited above.]

Woodcock Reading Mastery Tests	Reading Grade
Word Identification	3.9
Passage Comprehension	5.1

Key Math Diag. Arith. Test			Total Score:
Content:	Numeration	5.4	4.7
	Fractions	5.4	
	Geometry Symbols	5.3	
Operations:	Addition	4.0	

	Subtrac.	5.4
	Mult.	3.9
	Div.	4.1
	Ment. Comp.	3.6
	Num. Reason.	5.3
Applications:	Wrd. Prob.	4.2
	Miss. Elem.	4.3
	Money	5.6
	Measurement	3.9
	Time	5.3

COLLINGSWOOD PUBLIC SCHOOLS-CAMDEN UNIT

SPECIAL SERVICES

Magill and Comley Avenue

W.Collingswood, N.J. 08107

STAFFING/INDIVIDUAL EDUCATIONAL

PLAN/ANNUAL REVIEW

Name:John Reardon Date: 5/30/85

D.O.B.:8/31/76;C.A.:8-8;Date of Ref.: 4/3/85

Sex: M Placement at time of Referal:

Address:278 Harvard Av. School:Tatem;Grade:3

Parent:Virginia Reardon;Teacher:Cathy Schill

-ing

Date of Previous Staffing

REASONS FOR REFERRAL:

"Severe emotional problem. Cries daily which is a nuisance to the rest of the class. Seems to be socially maladjusted."

IN ATTENDANCE:

Case manager:M. Gordon Guid. Coun.:_____

Pyschologist:M. Gordon Teacher:Mrs.Schilling

LDTC:Mary B. Mahon Teacher:

Soc. Wrkr.:_____ Parent/Guard.:Mrs. Reardon

Nurse:_____ _____

Principal:Mr. McDonnell Other:_____

The above met jointly and approved the Educa -tional Plan.

Minimum Basic Skills Exemptions:Yes( ) No(✓)

Minimum Grad. Requir. Exemp.: Yes( ) No(✓)

CLASSIFICATION:Emotionally Disturbed

Eligibility for special education and/or related services is based upon:

( ) perceptual motor difficulties.

( ) Neurological report.

( ) Academic achievement below intellectual functioning.

(✓) Psychiatric report.

( ) Other_____

SPECIAL EDUCATION PLACEMENT

Emotionally disturbed for:

(x) all major subject areas ( ) English

( ) Reading ( ) Gym ( ) Science ( ) Art

( ) Music ( ) mathematics ( ) History

Date to be Implimented: Sept. 1985

Rationale--The above placement is the least restrictive environment for improving educationally week areas.

LINDENWOLD PUBLIC SCHOOLS
SPEECH AND LANGUAGE SERVICE:
INDIVIDUAL EDUCATION PROGRAM
BASIC PLAN/INSTRUCTIONAL GUIDE

Name: JOHN REARDON

A. Description of Current Speech and Language behavior:

JOHN exhibits an articulation disorder characterized by A LISP FOR S & Z. The classroom teacher observes the same behavior in class. JOHN can express HIMSELF appropriately and other communi-cation skills appear age appropriate.

B. Annual Goals and Objectives:

Criterion is 90% accuracy for objectives d-j.

1. JOHN will use the correct S & Z sound (s) in all positions with 90% accuracy in spontaneous,conversational speech.

JOHN will:

(completed) a. Be able to identify the sound

(s) in isolation.

(completed) b. Be able to identify the correct sound(s) and incorrect sound(s) produced by the speech correctionist.

(completed) c. Be able to indentify the posi-tion of the sound(s) in words (initial,final,middle).

d. Will be able to correctly ar-ticulate the S & Z sound(s) in isolation.

e. Be able to correctly articu-late the S & Z sound(s) in sim-ple nonsense syllables.

f. Be able to correctly articu-late the S & Z sound(s) in non-sense words and phrases.

g. Be able to correctly articu-late the S & Z sound(s) in mean-ingful words:

1. Beginning position

2. Final position

3. Middle position

h. Be able to correctly articulate the S & Z sound(s) in phrases.

i. Be able to correctly articulate the S & Z sound(s) in sentences.

j. Be able to correctly articulate the S & Z sound(s) in conversation.

C. Description of program:

JOHN will be seen by the speech correctionist ONCE a week in a group of no larger than 3 students. This program will begin OCT. 1983 and continue until June 1986, unless the annual goal is accomplished at an earlier date. An Annual Review will be sche-

duled to evaluate progress.

D. Strategies-Media-Material

Auditory,visual and kinesthetic cues will be emphasized in order to shape the successive approximations to the target sound. A strong program of train -ing in nonsense sounds will be done be -fore the introduction of meaningful words.

E. Evaluation Procedures:

Progress will be evaluated informally by the speech correctionist during the sessions and with a standardized arti- culation test in June. Periodic consul -tation with parent(s) and teacher will occur to determine level of carryover into spontaneous speech.

F. Comments:

.....

.....

THEODORE M. COSTA, P.A.
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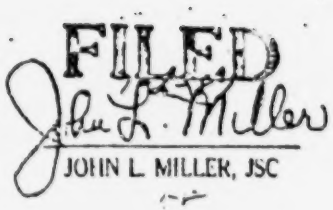
Moorestown, N.J. 08057
(609) 866-2622
Attorney for Plaintiff



Plaintiff	:	Superior Court of NEW JERSEY
	:	CHANCERY DIVISION
Virginia E. Reardon	:	CAMDEN COUNTY
	:	
vs.	:	Docket No. M-04123-83
	:	
Defendant	:	CIVIL ACTION
	:	
John E. Reardon	:	ORDER TO SHOW CAUSE

This matter being presented to the Court on the application of Theodore M. Costa,Esq. , attorney for plaintiff, and the Court hav -ing considered the arguments of counsel and the Affidavit of plaintiff with support- ing documents, and it appearing that if in- junctive relief were not issued immediately plaintiff might suffer irreparable harm; and for good cause shown.

It is on this 2nd day of July, 1987 ORDERED that on July 14, 1987 At 9:00 a.m.

or as soon thereafter as counsel may be heard, the defendant shall show cause before this court at the Hall of Justice, Camden, New Jersey, why an order should not be enter -ed enjoining and restraining him from ex- ercising custody or visitation over the children born of the marriage.

It is further ORDERED that until the re- turn date of this Order to Show Cause, de- fendant is hereby enjoined and restrained from exercising any custody or visitation of the two children born of the marriage, be- ing John Reardon, Jr. and Judith Reardon, and that custody of said children shall re- main exclusively with the plaintiff Virgin- ia Reardon until further Order of the Court.

It is further ORDERED that a copy of this Order to Show Cause, Affidavit, and all supporting documents shall be served upon de -fendant within five(5) days of the date of

BEST AVAILABLE COPY

this Order.

It is further ORDERED that the defendant may seek to modify the restraint contained in this Order upon two(2) days' notice to the plaintiff.

It is further ORDERED that defendant is restrained from coming into any contact with Plaintiff and the children born of the marriage until further order of the court. [comment: note that this is an Ex Parte, no prior notice termination of all parental rights, based upon hearsay evidence, conclusory allegations and self serving testimony. see pages 191-206 of this appendix.]

JOHN L. MILLER, J.S.C.

SUPERIOR COURT OF NEW JERSEY
CAMDEN COUNTY,CAMDEN,NEW JERSEY

Plaintiff,	:	Superior Court
	:	Chancery Division
Virginia Reardon	:	
	:	Docket No. M-04123-83
vs.	:	
	:	
Defendant,	:	Transcripts of Divorce
	:	Proceedings of 1984.
John E. Reardon	:	

DR. Hopkins,witness, Cross:(Clinical psychol-ogist not trained in child psychology or psychiatry and not familiar with the effects and consequences of psychological bonding/ parentage.)

Q. And is it not a fact that you indicated to Mrs. Reardon that she should not keep the children from Mr. Reardon in place of religious education---

A. Yes.

Q. ----because it creates a poor relationship with him?

A. That's right. That I remember clear-

ly.

Q. Okay. And that's not in your report, is it?

A. No it is not in the report.

Q. And that's an objective unilateral act which was agreed between all parties occurred and you felt was detrimental or had the potential of being detrimental to the parental relationship, yet----

A. That's true.

Q. Yet it was not contained within your report?

A. That's correct.

Q. And that is something that in your opinion is detrimental both to the children and the parental relationship, correct?

A. That's true.

Q. And that was not contained within your report?

A. That's true.

Q. And in your opinion that act is significant, isn't it?

A. Yes, that's true.

Q. But in the context of what we had---

A. In the total context---the reason it's not in the report is that it was my per-ception that Mrs. Reardon would not have been so rigid as to continue that if some third party would have mediated that,and she would have, I think knowing how she reacts to other things, would have taken the child out of the situation. If I thought for a minute that Mrs. Reardon put the child in the school against Mr. Reardon's wishes and would have been so rigid as not to reconsider his rights and deprive him of those rights, that would have probably--no question, would have been in the report. I did not get that impressions, however. I got an impression of somebody who would have readi-

ly with mediation rearrange the situation so that he would not be deprived.(compare to pages 156-190 of this appendix.)

Q. Doctor Hopkins J.J. is still in religious school, correct?

A. Um-Hmm.

Q. To the best of your knowledge.

A. To the best of my knowledge.

Q. And Mr. Reardon immediately told you how concerned he was and upset he was about that, correct?

A. Um-Hmm.

Q. And Doctor Hopkins you were also in receipt of pleadings which were filed in this case where Mr. Reardon took an affidavit indicating that he has been denied Satur -day visitation primarily in his opinion be -cause of the enrollment of the son in reli -gious school. Do you recal that?

A. Yes, very clearly.

Q. Fine.

A. And we spoke at---and we spoke at some length concerning this, and I tried to motivate Mrs. Reardon, but it wasn't--you know this is not mediation, this was still evaluation,we were still doing some attempts at mediation--to provide Mr. reardon with that time. It is my belief, however, with therapy she will not be so rigid as to insist on it.

Q. Up to today though that hasn't proven out, has it?

A. I don't know.

Q. He is still in school.

A. I really don't know.[compare to responses on page 141-143 and note the petitioner was denied an ability to appeal this case to the court of appeals in New Jersey.]

Dr. David M. Ellis, witness, Direct:(Child/

Adult Psychiatrist, specializing in child psychiatry and who does custody evaluations for the Pennsylvania Court system and is fully familiar with the consequences and effects of psychological bonding/parentage.)

Q. When---just to interrupt you for a moment,---what did you see as what J.J. understood the purpose of this meeting to be?

A. J.J. Knew---he knows the word opinion, he doesn't know its full depth, but he knows the word and some concepts of that word and meaning. He knew that I was going to be offering an opinion about what's---where he's going to wind up living, he does ---the word custody is more of a word to him , but where he lives, namely who's "in charge of him", and where's he go to school, and what he understands by what was going to be happening, I was going to have an opin -ion about that.

A.....I was expecting a---a younster who was going to have a great deal of difficulty in attending to me and our task and so forth, that did not happen. His---his attention was with me and on the subject throughout. There was no difficulty whatsoever in managing him or getting him to pay attention and so forth, so one thing I concluded was that this was more of a side issue---was that if there is an issue of hyper-activity with this guy, it does not show itself when he gets a lot of direct attention. He and I were alone, of course and there was no---no diversions and so forth other than the things within the office, but he was able to attend to what we were doing which was a positive finding, by the way, positive in the sense that it was pleasing, you don't like to see problems in kids so here was a---something that had been report-

ed as a problem, but was not showing up with me.

Q. Did you doctor, if I may, did you conclude that that had something to do with the direct attention that you were giving him?

A. That, yes, certainly and also the fact that J.J. has been in treatment, he spoke about Dr. Schmulowitz a couple of times and obviously his therapy is working, so yeah, I was pleased with all of that.

Q. Okay, good, go on.

A. In general I found him to be a---except for that---that particular finding, a fairly healthy guy psychologically speaking. He doesn't look like---when you look at him , he doesn't look like the healthiest guy, he's kind of pale, he looks---he's not real vibrant and happy in his appearance and what I concluded about that particular finding

is that he's a worried fellow. He's bright and he is very much aware about what's going on---this custody issue for him is very painful, obviously, and it's---it's very troubling to him. I felt, however, he was handling it at an okay level, that is, I did not feel that he is so depressed that he is going to be having symptoms as a result of this, but rather that for his age and where things were at that time---that is the fact that no decisions had been reached yet, that he seemed to be at a good enough level of ---of negotiating the whole thing internally in his own mind.

Q. Okay.

A. Probably as far as the custody issue is concerned the major feeling that I--I noted was---who he most---who meaning, which of his parents, who is he most identified with---identification as far as children are

concerned is a very important, very deep psychological phenomenon and its not easy to describe without a whole bunch of technical words, but briefly it has to do with how does a child in his growing up and infor-mative years which can go up well past where he is now. With whom does a child iden-tify means who is he in part modeling him-self after. Who does he see as his internal human figures or people that he wants to be-come like or borrow from or take into him-self and make a part of him. And my opinion was that he is very identified with his father. In my report I recommend---just let me find that one part because it's---I think it's important. Okay, on page two the large paragraph for those who have this, just about the middle of the page. Clear evidence that J.J.'s highly identified towards his father and field toward (sic)---feels toward

him as a primary parent.

Q. Would you expound on that a little bit.

A. Well, let me come back, If I may.

Q. Okay.

A. I think it would be more---better sense if I go on just a bit. Although there are usually similar findings in boys of this age, the signs in J.J. were not only more clear, but also seemed to go back over sever -al years. The primary parent is a---is a phrase that can be used both as a casual de- scriptive statement as well as a psychologi -cal construct (sic). from a descriptive standpoint it can refer to and ordinarilly does in common language as who---which par- ent or person has been the---the principle caretaker of the child and that's easy enough to identify,you can ask the lady next door and she'll be able to tell you that or

you can ask most kids that same question. As a psychological construct which is, as far as I'm concerned, is the far more important thing,the---the issue could be thought of as from---from early on in life, and I'm speaking now of the preverbal period, I'm talking of that time of the first year of life, starting from---well really starting from birth but it becomes a lot more important by about age two months. The---the person who performs what is ordinarily called the maternal role---now maternal is a word that usually means a female and usually more usually means the mother, but it does not have to be either a female or the biological mother. The maternal role can be fulfilled by---by a male or a female, by a sibling, a hired person, by any number of people can fulfill that role and the primary parent then in psychological terms is---is almost

the same---almost has the same meaning as who was the primary maternal figure for the person we're thinking about. As far as J.J. was concerned, my conclusion was that the psychological issue of the primary parent was his father. Now we know from---from description that Mr. Reardon was the principle ,physical caretaker of J.J. during, I think the first two years or the subsantial part of his early life, so that would tend to---to really reemphasize what I've said before about the psychologic primary parent. What's important though, as far as my findings with J.J. is that this seems to be---based on the things he said and the drawings and what he said about the drawings and other things that he drew and what we talked about that his father seems to be his primary---what's another term that could be used for this---his primary object, and so to me that

was a--an important finding. You don't usually see that, but that's the way it turn -ed out with J.J. The significance of that is something that I would only have to specu -late on, but one thing that the signifi- cance is not and I'm emphasizing that is that this does not mean, nor should anyone think it---that this means he's going to be- cause of it. Girls--baby girls usually have a mother as their prim y object and most girls are not homosexual, so it would be wrong to think of because J.J. has this in- ter-constuct---psychological construct about his father, it should not be interpreted as anything homosexual, I'm just adding that because I don't want it to be---I know that sometimes when psychiatrists talk with non- psychiatrists it---sometimes things can get misunderstood and I want to make that clear.

Q. What significance---is there a signi

-ficance in your finding doctor, concerning J.J.'s identification with his father over and above the fact that he's a boy of seven years of age? I think you indicated that it goes beyond that, that that identification is stronger than in a normal boy of that age , is my understanding correct.

A. Don't say normal, say in an ordinary boy,---

Q. In an ordinary boy.

A. ---his age. J.J.'s normal enough and lets not think that he's abnormal, I don't want to---

Q. Well, I didn't mean to apply that.

A. How can I respond to that? The signi -ficance of it is for J.J. and especially now that we've come back to the current issue, the custody issue---as far as I'm con -cerned that becomes or again, has to be- come again in my terminology---has to become

the decisive factor in the custody decision. My opinion is that J.J. is better off right now living with his father because of that fact. This little guy has had---both the kids have---just think about J.J. for a moment though---he's had some difficulties in his own domestic situ---excuse me---his own domestic situation and it would be better to keep that as---or at as minimal as we can and I think seperating him from that figure ---that is the figure that his father has become---seperating him I think would be harmful to this little guy at this time. If he were older, I would not feel so strongly about it.

SEGAL & TROPP
Suite 625, One Cherry Hill
Cherry Hill, N.J. 08002
(609) 779-7000
Attorneys for plaintiff

	:Superior Court of N.J.
Virginia Reardon,	:Chancery Division
	:Camden County
Plaintiff,	:Docket No. M-04123-83
	:
vs.	: Civil Action
	:
John E. Reardon	: Order To Show Cause
	: Temporary Restraints
Defendant.	:

This matter being presented to the Court on Wednesday, November 9, 1983, by Vincent D. Segal, Esquire, of the firm of Segal & Tropp, attorneys for the plaintiff, VIRGINIA E. REARDON, and it being represented that there was telephone notice to Richard C. Klein, Esquire, of the firm of Melnik, Morgan & Klein, attorneys for the defendant, JOHN E. REARDON, and the Court having review-ed the certification which asserts that immediate, substantial and irreparable loss,

injury and/or damage will result unless the order sought herein is granted by the Court ,and there being good and sufficient cause:

It is on this 9th day of November, 1983, ORDERED as follows:

1. That the defendant, JOHN E. REARDON, appear before the Judge assigned to matrimon -ial matters at the Camden County Hall of Justice, 5th and Mickel Boulvard, Camden, New Jersey, on the 29th day of November, 1983, at 10 o'clock in the fore noon, to show cause why an order should not be enter-ed:

a. Placing residence of the unemanci-pated children, John,age 7 and Judith, age 4 ,with plaintiff;

b. Directing that the plaintiff pay a suitable amount of support for the uneman -cipated children in the plaintiff's resi-dence;

c. Granting such other relief as the Court deems equitable and just.

2. It is further ORDERED that residence of the unemancipated children, JOHN and JUDITH, shall be with the plaintiff untill further order of the Court and defendant is enjoined and restrained from interfering with this residence until further Order of the Courts.

3. That the Provisions contained in this order shall expire on the 29th day of November, 1983, unless on or before such time the date be extended as provided by the rules of court;and that said defendant shall have leave to move for dissolution or modification of the Provisions hereby imposed on two(2) days' notice to the plaintiff's attorney.

4. That a copy of this Order to Show Cause, the certification upon which it has

been filed, certified to be a true copy, be served upon the attorney for the defendant, Richard C. Klein, Esquire, of the firm of Melnik, Morgan & Klein, 132 Kingshighway East, Haddonfield, New Jersey.

[comment: note that this differs from the 1987 Ex Parte OTSC in that this OTSC was not brought as a Domestic Violence complaint.]

Robert W Page

~~ROBERT W. PAGE, J.S.C.~~

ROBERT W. PAGE

MELNIK, MORGAN & KLEIN
A Professional Corporation
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132 Kingshighway East
Haddonfield, New Jersey 08033
Telephone:(609) 795-2200
Attorneys for Defendants

Superior Court of N.J.
Chancery Division
Camden County
Docket No. M-04123-83

Virginia E. Reardon,	:	
	:	
Plaintiff,	:	Civil Action
	:	
v	:	Order
	:	
John E. Reardon,	:	
	:	
Defendant.	:	

THIS MATTER, being presented to the Court on Thursday, December 22, 1983, By Richard M. Orr, Esquire, of the Firm of Melnik, Morgan and Klein, P.A., attorneys for the defendant, John E. Reardon, in the presence of Vincent D. Segal, Esquire, of the firm of Segal and Tropp, attorneys for the plaintiff, Virginia E. Reardon, and the Court having

reviewed the Affidvait filed by the defend-ant and having listened to argument of coun-sel, and there being good and sufficient cause:

It is on this 10th day of Jan., 1984, ORDERED as follows:

1. Defendant, John E. Reardon, will have visitation with the two minor children of the marriage from 2:00 P.M. Christmas Day, December 25, 1983, until Tuesday 27, 1983.

2. Defendant, John E. Reardon, on Tuesday through Friday will have weekday afternoon visitation with both children after the end of each of the children's school day until defendant leaves for work at his job in Bell-mawr. Mr. Reardon will drop off both child-ren at plaintiff's residence in Collings-wood at the end of each weekday period of visitation.

3. Defendant, John E. Reardon, will no

longer have Saturday visitation from 10:00 A.M. to 2:30 P.M. with the minor children of the marriage to enable both children to spend the entire Saturday with Mrs. Reardon.

2219 Brighton Ave.
Lindenwold, N.J. 08021

May 26, 1984

Dear John

Starting Mon. June 25, 1984 through Friday, July 20, 1984 J.J. and Judy will be going to day camp. Please be advised that J. J. and Judy should attend camp on Monday during this 4 week session. You may pick the children up at Zane North in Collingswood around 4:40 P.M. or you may just leave them with me overnight. If you elect to pick the children up at Zane North you will have them back at the bus bus stop at 8 A.M. or leave them with me so I can pack their lunches and get them ready for camp. I will have to have the children back at the house by 7 A. M. to get ready. It is imperative that J.J. and Judy attend day camp every day so that there isn't a break in their swimming lessons.

Very truly yours,

Ginger

Segal & Tropp
Attorneys At Law
Suite 625 One Cherry Hill
Cherry Hill, N.J. 08002

Vincent Segal
Walter Wm. Tropp, Jr.

Telephone
(609)779-7000

June 18, 1984

Honorable Robert W. Page
Camden County Hall of Justice
Room 270
5th Street & Mickle Blvd.
Camden, N.J. 08103

RE: Reardon v Reardon
Docket No. M-04123-83

My dear Judge Page

Since filing the Notice of Motion in this matter, which is returnable june 29, 1984, I have been advised by my client that she enrolled the children in a Summer Camp program for four weeks commencing Monday, June 25. She advised Mr. Reardon of her intention to make these arrangements and suggested that his Monday visitation commence at the

end of the camp day rather that at 10:00 A. M. He has refused this suggestion and insists that the children not attend camp on the four Mondays, June 25, July 2, July 9 and July 16.

I am asking that the Court treat this letter as an amendment to the Motion which is returnable in a week and a half and deal with this issue at that time as well.

MELNIK, MORGAN & KLEIN
A Professional Corporation
P.O. Box 170
132 Kinshighway East
Haddonfield, New Jersey 08033
Telephone:(609)795-2200
Attorney for Defendant

Superior Court of N.J.
Chancery Division
Camden County
Docket No. M-04123-83

Virginia Reardon	:	
	:	
Plaintiff,	:	Civil Action
	:	
v	:	Affidavit of John Reardon
John E. Reardon	:	
	:	
Defendant.	:	

State of New Jersey :
: ss
County of Camden :

I, JOHN E. REARDON, of Full age, being duly sworn according to law upon his oath de-poses and says:

1. I am the defendant in the above matter and take this Affidavit in response to that Motion filed by my former wife concerning

the issue of visitation.

2. I take this Affidavit to ask the court not to permit my wife to continue to take further steps to thwart my relationship with my children. As the court may recall, I fin -al judgment of Divorce has not yet been signed in this case. However, one of the decisions by the Court dealt specifically with limiting my visitation priviledges much more so than they had been prior to the divorce. While I strongly object to the limitation of visitation as I feel that it adversely affects my relationship with my children, I have not made a big issue of it up until this point. However, circumstances now are such that my former wife is seeking to enroll the children in a day camp Monday through Friday.

3. While I can certainly understand the desire for the children to be in day camp, I

believe that balancing the interest of the children being in day camp versus their ability to spend time with me, someone who was the principal parent in this marriage since virtually their birth, would not be to the benefit of the children. My situation at work is now such that I am not working Mondays and Tuesdays. Previously I was off only on Monday and this was my day visitation. In fact, it was my only full day of visitation. Now, with the children enrolled in summer camp, even for four weeks, I will lose meaningful time that I have with them. I simply do not believe that this is the Court's intent and I ask the court to balance the interests and allow me extended visitation during the summer months.

4. I have done everything in my power to attempt to negotiate the personal property issue involved here. As the Court will re-

call, lists were exchanged back at the time that the divorce was entered. Apparently, my former wife's attitude about negotiations is simply that this is the list and this is what I want. My attitude is that the list should be presented to each other and then compromises should be made. Absolutely no compromises have been made whatsoever, For me to continue to spend counsel fees in an effort to beat my head against a wall to try to negotiate enything with my former wife has proved to be ridiculos. I will ask for the Court's advice on this matter.

Dec. 17, 1985

Dear Dr. Goldstein,

After having talked to you this morning I began to think about our conversation and ask myself some questions. Upon careful consideration of those questions and the conversation, I must conclude that yo have taken sides with Mrs. Reardon to help her and the state. This is based on the following:

1) Why is it that after six months or so that you decided to call me to see if I would talk to you. Especially since it comes at a time when the school and Mrs. Reardon has now gotten themselves into a dilemma over J.J.'s re-classification. Wether someone told you I wouldn't talk or not is immaterial since you could have easily picked up the phone and called to find out.

2) You stated that you were on no ones side but the children yet when I asked you to look into the book "Beyond the Best Interest of the Child" you claim -ed to see no benefit in that, as you were only interested in helping the child. tell me, how do you help some- one if you don't know for certain where the person is coming from or why he has the problem to begin with?

3) When we got into the conversation over helping J.J. I cited an example of how sometimes things have to be let happen or the overall problem and the hundreds and thousands of people that would be affected in the future would continue and you concluded that if I was unwilling to cooperate, that I was trying to harm J.J. I now put you on the spot and ask you to put it in writ

-ing that in fact Mrs. Reardon has done what you were willing to conclude about me in that despite her having seen you for some six months and that you have continued to tell her of the problem of making others look bad in front of the children, I must conclude that she has done exactly what you said to me since she had continued to use the children and their activities to degrade me in front of the children despite what you have said and a Dr. Hopkins stated in court regarding the interference with visitation, and that unless you are willing to go on the record you have put yourself in the middle and are taking sides.

4) That all of the above was done in violation of the A.P.A. Regulations which state that you are required when

giving therapy to anyone to avail your -self to any and all avenues to obtain sufficient material to counsel patients. This is also done in light of the fact that you claim that J.J. told you that he was receiving punish assignments when he would return from visitation with me that you failed to check with the school to find out just when and how often he did get such assignments. Why? I would also point out that a general question of "Did you get a punish assignment this week? When?" is not prejudicial on the surface, however, if it is only done when the child returns from visitation with me then it becomes pointed and thus one sided and prejudicial. As I stated to you, there was one Monday, which both my parents can ateat to, that J.

J. got a punish assignment to write something 125 x's on a week that I did not have the children that weekend. He also got one this past thursday and again he had been with his mother on Tuesday and Wednesday.

The fact that these things have occured and that you have failed to act in accordance with the A.P.A. regulations and the timeing of your sudden interest leads me to the only conclusion that you are seeking not only to assist Mrs. Reardon, but the school and ultimately the state with these problems by hoping that you could get me to come in and thus find something that would assist all of them and their dilemma. Therefore, I respectfully submit that I could not talk to you candidly for fear of how you would twist things as has been done so many times in the past and thus we will leave it that

when the child has a problem I will simply correspond it to you in writing. The above are not lightly taken or misplaced allegations, they are based on the fact that you failed to act in a reasonable and legal and timely fashion coupled on your responses. I would close this letter by giving an example of something Dr. Hopkins stated in court during the custody trial,

> The Dr. stated that one reason he would remove custody from me is that he got the impression that I would in -terfere with Mrs. Reardon's visitation, despite the fact that no incidences occured during the pendency of the May 1983 court order. However, when asked about a unilateral decision about Mrs. Reardon having interfered with my visitation and specifically asked if he thought she did it

willfully how it would affect his report, he simply replied that it would be worth noting.Standards must be applied equally both ways or they become discriminatory or prejudicial, and thus independence of that supposed authority must be questioned.

Your profession is no different than any other profession, you must base your decisions on fact and not feeling. I hope that this letter will set you and everyone straight as to your credibility unless certain things are now placed on record by you. Of course this thus presents a problem to you for malpractice no matter which way you choose.However, I can tell you I will in all likelihood bring said suit before Mrs. Rear-don would especially since you have preformed opinions about me simply based on what my son told you. I will also tell you

that Mrs. Reardon's manipulation of the children and what the children are telling you can easily be set out by myself and I again caution you as you, wether you like it or not, are in the middle of a problem that Mrs. Reardon and yourself have placed you in and not anything that I am now telling you. I truely hope that you strongly consid- this letter and its contents and if there is indication that your prejudice will diss- appear then my fears will dissappear.

Respectfully,

John E. Reardon

Note: I would also point out the follow- ing about item #4 above. When J.J. came home that day, he was asked when the assign- ment was due and he said later in the week. I would further point out that later that evening Mrs. Reardon called and spoke with my mother and told her that the assignment

did not have to be completed right away and that if J.J. did not get it done that not to worry as she would help him finish it. I point this out for two reasons: 1) When he went to school the next day the teacher upped the assignment to 150 x's for not having completed it, and 2) the comments about Mrs. Reardon's manipulation. She calls my mother because she knows she will not be recorded unless she talks to me and on the other hand, when she talks to me it is about insignificant things to give the appearance that everything is on the up and up and that there is something wrong with me and my family. i.e. to help her try and prove I am paranoid. Don't get caught in these games as you will eventually lose if you do. This is not a threat just a warning to let you know just what is going on as it is apparent from your response to item 4 above to show

you that it is not the children telling you what you want to know but rather Mrs. Reardon through the children to manipulate you. I would also ask you to ask yourself what benefit and/or harm it creates for the children for a mother to willfully refuse to let me talk to the children two nights a week on the phone which gets them upset for two reasons: 1) that she won't let them talk to me and 2) the reasons she won't let them talk to me is because she knows that the court's aren't going to say anything if I take her to court and then the chidren get upset because I can't do anything to correct this problem. (I have tape recordings to prove this.) Also, ask J.J. about his "Joe Pop" who has and continues to pull his hair which gets him extremely upset. If you are going to make accusations and conclusions get all the facts and not just one side. You

have believed everyone else up till now, now start believing the truth, as I have no rea -son or need to lie as supported by case law at both the state and federal levels and the book " beyond the best interest of the child".

One last comment that I think is appro- priate here is this. You claim that you have my sons best interest at heart. I claim you do not unless you are willing to do some- thing that this example will clearly point out to you. You would have someone believe that because John Doe attempted to commit suicide that you are helping him out by eith -er A) locking him away so he can't harm him -self, or B) having everyone around him make sure that he is unable to get anything for which he could attempt suicide again but leaving the problem as to why he wanted to commit suicide in the first place unaddress-

ed. Either one of these is ludicrous as some -one cannot be around John Doe all his life and if the problem, and not the means or consequences or results of that problem, is not dealt with to correct the problem, you are only postponing the inevitable but for which you are so apparently unwilling to involve yourself to prevent and correct and thus unless you are willing to do and begin to look where I have told you and begin to deal with the real problem and not simply look for something to hang your hat on & if you become involved in any way other than for Johns counseling, you will be committing malpractice for refusing to properly treat and help a patient and you will also be demonstrating prejudice if you do not become involved in the proper fashion to demonstrate your supposed independance and concern. I wait your reply.

January 7, 1986

Dear Dr. Golstein,

I am not certain just how long this letter will be as I am formulating it as I type. First, I would like to compliment you an your tact and ploy and cunning for writing a letter that looks perfectly honest and sincere and independent but is nonetheless pointed and opinionated in a negative fashion to myself. I have not figured out if you talked to a lawyer first or did it on your own. The interpretation and analysis of your letter is as follows and for the following reasons:

A) You continue state you are only for my son and your letter would seem to indicate it as well, however, there is a pointed-ness in your letter. That is to say, If you wanted to respond to all of my points, why did you not do so but instead drafted the letter to focus in on my fears.(i.e. a

condition or factor in psychology/psychiatry related to paranoiah.)

B) Also, by you refusing to take issue , and a stance you protected your image or impartiality and would do so even further if you were to be forced into court by subpeona.

C) I would also point out to you that the N.J. Court of Appeals in a case I have in my files has ruled and accepted the contention put forth by a child expert regarding the removal of the child from the psychological parent and the subsequent counseling after that removal would only at best maintain the status-quo of the child.I point this out because by the very fact that you imploy BIO-FEEDBACK to try and teach my son self control over his problems, them yo are not getting to and addressing the problem and are therefore not helping him to recover

and cannot help him recover. But more import -antly, you are establishing a problem that is apparently un-controlable in any fashion and thus BIO-FEEDBACK is proof in and of it -self as to the problem my son has and that you refuse to take a stance to protect his interest is willfull on your part and thus you are committing malpractice.

D) Since the standard above is a stand -ard of law which you are bound to by the A.P.A. to not deny me of,then your silence also speaks for itself by your refusal to properly and adequately respond to my pre- vious letter and or send a letter to the state, the court or Mrs. Reardon regarding this problem and the inability to solve it as it is.

E) I also would point out to you that negligence is the probable or related cause for malpractice. When you are bound by the

A.P.A. guidelines and refusal to adhere to them, that is something that any ordinary person under the same circumstances would be required to do wether it is in fact done or not.An example would be as follows:

> The law states that a company must pro -vide filters for its workers who work in coal mines and the company ignores the law even after an employee finds out about it, reminds the company and then they still ignore its responsibil -ity. If the company fires the man be- cause of his actions, the company can be sued for liable. If the employee is subsequently injured, the company may again be sued for willfull negligence, in your case--malpractice. What is at stake here is wether there is some- thing that binds yo by law and the an- swer is yes. For the A.P.A. and licens

-ing is governed and bound by law and the rules binding the Dr.'s are set forth by them to ensure a safe and ade -quate service is rendered to the pub -lic which are the A.P.A. rules govern ing the right of a Dr. to practice and obtain a license to practice in this state. Therefore, you are bound by law to carry out your task which you have failed up to this point tried to scurt around.

I Hope now that you will either respond to my letter appropriately and answer all issues and points or at minimum place yourself on the record regarding the case in #C above. I will not give you the case, I will tell you it is no joke and no bluff. It is real and I do have it. If you want it, spend the money on a lawyer to find it as I have had to spend hundreds of hours doing re-

search.If a stance is now not made by you in accordance with this case, I guarentee I will file a malpractice suit against you for what is happening to my son.(i.e. he was de-classified under my care, and been reclass-ified under Mrs. Reardon's care. He has become openly hostile and aggressive, his handwriting and concern for others and his school work has dimished greatly and rapidly and he has become an almost blatant and habitual liar.These three things have been observed to happen when the child is removed from the psychological parent as indicated in the book "Beyond the Best Interest of the Child".) The last thing that I would point out is that I attempted to call Mrs. Reardon this evening to talk to the children and she again refused and hung up on me. When you know you cannot help a child, you are obligated to tell everyone so and why and

recommend that things change or discontinue treatment. For when you continue to treat knowing that the problem cannot be corrected but rather only arrested and you continue to treat as though it can be corrected or get involved in opinions that cannot be proven based on the legal standards, you again commit malpractice. I hope that you will be man enough to respond to this letter in a professional and ethical fashion and speak to and address all the issues now instead of speaking at them or me. For you see Dr. this condition of refusing to answer appropriately is a condition known to psychologists for people who are afraid of respinsibilty or in this case you are simply afraid of the consequences. Either of these are a cop out and done so knowingly and willingly and thus willfully and I will point out that in a fairly recent case the

U.S. Supreme Court set a standard that Immune officials in state actions, civil rights cases, would not be immune from liability when they knowingly act in contradiction to their authority. What we have here is a standard were you knowingly act in contradiction to your legal authority and reaponsibility under the law. Thus while the cases would be different, the principled standard is not. I wait for your reply.

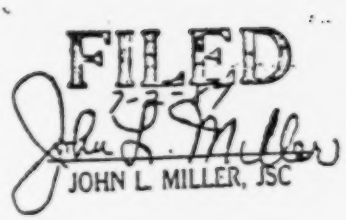
Respectfully,

John E. Reardon

[Comment: no answer was ever received on thia letter, and the original questions/

issues of the first letter have never been answered to this day.]

THEODORE M. COSTA
214 W. Main Street
Suite 100
Mooreatown, N.J. 08057
(609)866-2622
Attorney for Plaintiff



Plaintiff,	:Superior Court of N.J.
	:
Virginia E. Reardon	:Chancery Division
	:Camden County
vs	:
	:Docket No. M-04123-83
Defendant	: Civil Action
	: Affidavit of
John E. Reardon	:Virginia E. Reardon

State of New Jersey)
County of Camden)

Virginia E. Reardon, of full age, duly sworn upon her oath, states:

1. I am the plaintiff in the above captioned matter. I make this affidavit in support of this Order To Show Cause Why Defend-ant Should not Be Allowed Custody and Visi-tation because I fear for the safety of my children.

2. The parties were married on may 12,

1973. I instituted a divorce complaint for extreme cruelty in 1983. A final Judgement of Divorce was signed on July 23, 1984 by the Honorable Robert W. Page, J.S.C.

3. I divorced the defendant because he had a tendency to get physically violent, having beat me and making me live in a continual state of fear. At one point, in an attempt to take the kids away from me, he followed my car in a high speed chase, endangering the lives of the children and myself who were all crying hysterically, managed to block our path, pulled out the door from the car and actually tore the door off its hinges and grabbed the children until I called the police. On another occassion, defendant closed his fist and punched me repeatedly, causing me to suffer painful bruis-es about the body. Defendant is a rather big man, being under six feet in height yet

weighing 220 pounds. I weighed only about 125 pounds.

4. From the beggining of our marriage, and increasingly so as time went by, the defendant showed tendency to be a brooder, an associal introvert with few friends and little outlet for productive endeavor, especially after our divorce. Defendant was always complaining that someone was out to get him and was continually dissatisfied with his employers and supervisors, explaining that they failed to understand and appreciate him. Defendant even disliked many neighbors and was unable to get along with them.

5. In 1983, defendant was admitted to the Institute of Pennsylvania Hospital for psychotic depression for two weeks in patient treatment. I am not privy to the medical documents of the hospital prepared by its

staff psychologists.(no proof ever offered.)

6. Since the time of our divorce, defendant's bitterness against society and its legal system has increased to a fever pitch. Although his vocational position is clerical, he has suddenly become obsessed with filing lawsuits for any frivolous reason.

7. In September 19 6, defendant filed a specious United States District Court complaint, Docket No. 86-3560, alleging civil rights violations, against the undersigned, Judge Stanley Brotman, U.S.D.C.J., Judge Edward Mennetti, J.S.C., U.S. Magistrate Simandel, Judge Rosemarry Giambardella, J.U.S.B.C., Judge Twardowski, J.U.S.B.C., Judge Adams, Judge Weis, Judge Becker, Judge Van Dusen and Judge Stapleton, the five judges apparently being federal judges in Pennsylvania, Local school principals, counselors and teachers aids, Camden County Probation

Department employees,etc. The substance of the 42 page Complaint is that the several de -fendants conspired to place the parties son in special classes without notifying him. The suit is filed as a class action com -plainit.(86-3560 now has 20 Plaintiffs.)

8. Defendant has also filed three seper- ate suits before the United States Supreme Court against several superior court judges (including Judge DiMartino, Judge Paige, Judge Mennetti, and Judge Davis) as well as my prior divorce counsel(now Judge Vincent Segal) and his entire law firm, and various other parties, alleginig generally that the N.J. Suprerior Court had no right to order the sale of the parties' marital residence, that his own attorney (who was also sued, be -ing of Melnik, Morgan and Klein, P.A.) was wrong in allowing the judge to order the sale of the marital residence, that the Su-

perior court wrongfully allowed defendants attorney to withdraw as counsel, and other specious allegations all brought with the broad allegation of being denied Constitutional rights.

9. Defendant has also sued various other judges and officials in another suit now being litigated in Gloucester County, wherein defendant makes other ridiculous allegations of civil rights denial.

10. In April, 1987 defendant and I simultaneously attended a Parent-Teacher Confererence at the school of one of our sons. The school psychologist had a lengthy discussion with defendant. After defendant left (early in the meeting), the psychologist approached me and warned me about defendant, constructively advising me that defendant was beligerent, angry, despondent, fidgety, and not at all responsive to questions ask-

ed. The psychologist cautioned me to watch out for our safety because he appeared like he was "about ready to explode".

11. more recently, defendant has adopted a much more threatening and psychotic tone. for example, I recently received my copy of a letter dated June 27, 1987 addressed to Judge Farnan (assigned from Delaware, since the Camden County Judges are allready being sued) wherein the defendant actually admits his mental stability is in jeopardy, that he is fast reaching the breaking point, that he will commit violent or criminal acts if he doesn't get what he wants, and that he can no longer be held accountable for his own actions:

To quote the defendant, he states:

> The plaintiff's(Mr. John E. Reardon in this Federal District suit) mental stability has reached a point of all

-most (sic) virtual breakdown. If one more unconstitutional act (is perpetrated by the judges/defendants) the plaintiff is placing the responsibil--ity of his actions on the shoulders of the defendants...if the court fails to act to stop these acts the plaintiff cannot assure anyone of what will happen and to whom...the plaintiff's mental stability will be pushed beyond the brink of self control...the plaintiff has been patient with this court ...beyond a reasonable extent. If the court does not begin to take action to protect the plaintiff's constitutional and legal rights...(then) all actions by the plaintiff--due to his mental stability, which he cannot even afford to see a doctor to assist him...is placed on the shoukders (sic) of the

court and the defendants who want to continue to try and flaunt their power and laugh in the fact (sic) of theis (sic) plaintiff I hope and trust that justice can be done in this case and no possible violence or criminal miss-conduct (sic) is required to unnecessarrily come about due to the actions of the court and defendants. But unless something is done to begin to bring natters under the constitution, the plaintiff cannot assure anyone of his mental state, condition, actions, or reactions and what actions or reactions will in fact or could in fact occur.

12. As the Final Judgenment of Divorce indicates, defendant is allowed custody of our two young children, age 8 and 10, for two entire weeks. A copy of the relevant

portion of the judgement is attached hereto. Defendant has recently advised me he has chosen the two week period beginning July 3, 1987 to serve his custodial period.

13. I do not wish to have Defendant have custody of my children for the two week period because I honestly fear for their safety in view of recent events. I believe that defendant's words and letter have shown him to have become a man of angry depression, a man on the brink of irrationality who is no longer able to control his own mind and actions.

14. Because I fear so much for the safety of my children, I have had a clinical psychologist review the circumstances surrounding this Order To Show Cause. See report of Dr, David M. Goldstein, Ph. D., dated July 1, 1987, attached hereto. As the court will note, Dr. Golstein agrees with my opin-

ion that the children should not be left alone with the defendant pending psychological evaluation.(see app. pages 205 & 206.)

15. I hereby ask the Court to sign an Order temporarily preventing the defendant from exercising custody or visitation until further order of the Court based on emergent circumstances, and facing the spectre of irreparable harm.

[comment: if the court will note the first L in the supposed signature of Judge Miller on the first page of this exhibit and compare it to page 137-139 of this appendix and also note that the supposed signiature on this exhibit it can clearly see that the Judge did not sign this document, but rather it is a rubber stamp. Who rubber stamped it since there is a tape recording indicating the Judge heard no matters on these day--7/2/87? Also, if a man acts the way that a wo-

man does, demonstrates an emotional tie and reacts out of emotional distress--such as in the Baby M case, the courts find the father is unfit to even see his children. Yet the State Supreme Court settled this matter in the Baby M case by saying that a parents rights may not be terminated and contact lost except upon a showing of abuse or abandonement. No state court has ever yet found this parent guilty of either, and none of the allegations of this affidavit were proven by Mrs. Reardon. No evidence was ever given except that of the letter of the petitioner which was never proven to be directed at or towards Mrs. Reardon and the child -ren and the Letter of Dr. Goldteins, see page 205 , never verified any of the clinically based allegations of Mrs. Reardon. Mrs. Reardon was permitted to make allegations as though she were an expert, and

knows my mental condition,yet, while the petitioner was accepted as an expert in knowing his mental condition he was denied the guarenteed right to testify in his own behalf as to what the intent of the letter was on the grounds it is self-serving testimony and denied how is a loving and caring parent who is deeply psychologically bonded to his children supposed to react when he sees his children being victimized and taumatized? This is what happened in the marriage and it has been rejected and ignored and is still being ignored. Also, why is it that when a mother reacts in such a fashion she is not crucified--i.e. Mary Beth Whitehead--while a man is? In Mayer v Mayer, 150 N.J. Super.____, the court of appelas found it is against Public Policy to limit the parent/child relationship. Of course, there is also the question of right of trial by jury when

The charge--threat to do Domestic Violence sent by mail, 18 U.S.C. 1768--is such that if tried in Federal Court and required a jury trial the state cannot then deny.(Duncan v La.. 390 U.S. 389.)

DAVID M GOLDSTEIN, Ph. D.
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(Suit 102)
Moorestown, N.J. 08057
Phone (609) 667-0166

July 1, 1987

To the Appropriate Judge of the Superior Court of New Jersey.

I am the psychologist for John J. Reardon , son of John E. Reardon.

Mrs. Reardon has brought to my attention the letter written by Mr. Reardon dated June 27, 1987, a copy of which is enclosed. This letter was sent to Mrs. Reardon and various other people including judges, school officials, teachers, and case workers in the probation office. Based on this letter, and my prior contact (threatening letters) and information about the man, I believe that the children and Mrs. Reardon are in immediate physical danger.

Mrs. Reardon has advised me that the

children are supposed to spend two weeks with their father from July 4, 1987 to July 21, 1987. I strongly advised her against letting the children go with him in light of the enclosed letter and circumstances. I note that Mr. Reardon has threatened his vio -lent or criminal actions in the form of an ultimatum with a stated deadline of July 3, 1987.

Please feel free to contact me to further discuss this case.

Sincerely,

David M. Goldstein
Clinical Psychology
N.J. License 1536

note: 15 months have come and gone with no actions carried out, and further note that on 7-14-87, 11 days after the deadline, noth -ing had happened.

Supreme Court, U.S.
FILED
DEC 16 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-894

IN THE

SUPREME COURT OF THE UNITED STATES

October 1987 Term

JOHN E. REARDON, *et al.*

Petitioner,

v.

VIRGINIA E. REARDON, THEODORE M. COSTA, MARSHALL GORDON, DR. GOLDSTEIN, JUDGE MILLER, CATHY SCHILLING, MR. MCDONNELL, MR. DAYTON, MR. LOMBARD, MR. COCHRANE, COLLINGSWOOD SCHOOL BOARD, BORO OF COLLINGSWOOD, AND CHILD STUDY TEAM OF COLLINGSWOOD,

Respondent.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF RESPONDENTS MARSHALL GORDON, AND COLLINGSWOOD SCHOOL BOARD.

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INTRODUCTION

This brief is submitted in opposition to the Petition for a Writ of Certiorari from the ruling of the Third Circuit Court of Appeals. In light of the meritless nature of the Petition for Certiorari, it is respectfully submitted that an extensive brief arguing the merits of Petitioner's underlying claims is unwarranted and would only serve to impose upon the Court's valuable time and resources. This brief is therefore limited to arguments against the Court granting a Writ of Certiorari in this matter.

ARGUMENTS

POINT I

THERE ARE NO GROUNDS FOR THE ISSUANCE OF A WRIT OF CERTIORARI

This matter arises out of Petitioner's displeasure with the educational placement of his son. Without availing himself of existing administrative procedures, Petitioner filed numerous suits in Federal District Court, naming many of the parties to this action in several different suits. Two consolidated matters were dismissed by the District Court [Item number one of Petitioner's Appendix], which Order was affirmed by the Third Circuit Court of Appeals. Petitioner now seeks a Writ of Certiorari in order to have this Court review that ruling.

Rule 17 of the Rules of the Supreme Court of the United States details the bases for granting a Petition for a Writ of Certiorari. While review of a matter upon a Writ is within the discretion of the Court, *Fay v. Noia*, 372 U.S. 391 (1963), certain factors may be considered in determining whether the special or important reasons for such review exist. There are no such reasons in this case.

Petitioner has failed to show, nor has counsel been able to locate, any decisions in conflict with the decision of the District Court, which was affirmed by the Third Circuit Court of Appeals. Judge Rodriguez examined all of the claims made by Petitioner as thoroughly as possible. He then issued a clear and detailed ruling dismissing each one, finding that Petitioner had ignored available administrative procedures. This ruling is in accord with the case law which requires exhaustion of administrative remedies prior to instituting a suit of this type. *Tokarcik v. Forest Hills School District*, 665 F. 2d 443 (3d Cir. 1981), *Riley v. Ambach*, 668 F. 2d 635 (2d Cir. 1981), and *Smith v. Robinson*, 468 U.S. (1984). The

Court also found no state action and no violations of any recognizable rights of the Petitioner.

Petitioner has also failed to show, nor can counsel fathom, how the issues presented in this Petition constitute an important issue of federal law which has not been, but should be, settled by this Court. The issues presented as "Writ Questions" are much the same as those presented by Petitioner throughout the torturous course of litigation. They are highly fact specific, and the order of the Court of Appeals is not one which will affect many, if any, other litigants.

Finally the Court of Appeals affirmed a decision by the District Court which is a detailed and well reasoned ruling, considering all issues raised by the Petitioner, and giving them more consideration than they were due. To grant this Petition would not only cause the Court and defendants to expend valuable time, but also encourage continued meritless litigation of this action by the Petitioner. It is respectfully submitted that there are no grounds for the issuance of a Writ of Certiorari and that the Petition should be denied.

POINT II

IN LIGHT OF THE FRIVOLOUS NATURE OF THIS PETITION, DAMAGES SHOULD BE AWARDED

Rule 49.2 of the Rules of the Supreme Court of the United States authorizes the Court to award damages where a Petition for a Writ of Certiorari is frivolous. In *Southern Railway Company v. Gadd,* 233 U. S. 572 (1914), the Court held that where "the case was carefully and fully considered in both of the Courts below", and the arguments advanced justified the conclusion that the Writ was brought for the purposes of delay, a penalty in the form of damages was appropriate. *Southern Railway Company v. Gadd, supra* at page 581. Throughout the history of this matter, Petitioner has refused to use available administrative proceedings and

has abused the Federal Courts as a means of venting his frustration. He has filed numerous law suits, making the same baseless and outrageous claims against the same parties again and again. He has filed suits against members of the Federal and State Judiciary who have ruled against him, alleging that they are members of a conspiracy to deny him his parental rights. He has also included as defendants in these suits attorneys who represented parties he had named in earlier litigation. "Parties should not be subjected to the delay of proceedings for review in this Court without reasonable cause and our power to make compensation to some extent for the loss occasioned by an unwarranted delay ought not be overlooked." *Whitney v. Cook*, 99 U.S. 607 (1878).

In his Opinion in this matter, Judge Rodriguez stated that assessing sanctions against the Petitioner was warranted as the "legal foundation upon which he bases his claims is, without dispute, groundless." [Page 33 of Item No. 1 of Petitioner's Appendix]. However, Judge Rodriguez did not impose sanctions at that time, apparently hoping that such a warning would be sufficient. It is now all too apparent that a mere warning will not suffice to prevent Petitioner from continuing upon his course. Sanctions, imposed by the highest Court in the land, may bring a different result. "Experience teaches that the only way to discourage frivolous appeals . . . is by the use of our power to award damages." *Whitney v. Cook, supra* at 607.

CONCLUSION

For the above stated reasons, it is respectfully requested that this Court deny the Petition for a Writ of Certiorari from the ruling of the Third Circuit Court of Appeals, and that this Court impose sanctions in the form of damages pursuant to Rule 49.2 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

_____

Edward G. D'Alessandro

Dated: December 7, 1988